



P.O. Box 1230  
Marshfield, MA 02050  
[www.stellwagenbank.org](http://www.stellwagenbank.org)

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December 1, 2021

Eric Reid, Chairman  
New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, Massachusetts 01950

**RE: Proposed Georges Bank Recreational Cod Measures**

Dear Mr. Reid:

On behalf of the Stellwagen Bank Charter Boat Association, representing over one hundred charter/party boat captains and recreational anglers that fish the Gulf of Maine (GOM) and Georges Bank waters, we offer the following comments to the proposed Georges Bank Cod Measures:

**Georges Bank Quota**

- An approximate 73.8% reduction is proposed to the Georges Bank quota that equates to an ABC of 754 metric tons with an allocation of 411 metric tons to Canada and the remaining 343 metric tons to the United States (US). The US quota continues to historically go down and the percentage of Canadian quota continues to increase to the detriment of the US fisherman. The September negotiations did not consider the revised stock status and subsequent impacts to the quota that ultimately has changed the outcome with significant cuts to the US quota that is not commensurate with similar reductions to the Canadian quota. This continued inequity is of concern especially as it relates to the recreational portion of the quota. The cuts are being made to the quota independent of the impact to the recreational quota. In addition, the Canadian quota is a commercial quota that when given to Canada does not consider that portion of the quota that is recreational.
- As set forth below the average percentage of recreational catches relative to US fisheries total catches over a three year period for CY 2018-2020 is 20.6%. The assumed 20.6% recreational catch target is presently removed directly from the US 343 metric tons quota and set aside for use by the recreational community. It should be noted that Canadian quota is a commercial quota, yet that 20.6% recreational portion is lost to Canada to the detriment



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of the US recreational anglers. As a result, the 20.6% recreational catch target should be revised and taken from the ABC prior to the split between the US and Canada. Such an approach is fair and equitable to the recreational community.

### **Georges Bank Recreational Quota**

- *Option 3* – 71 mt for FY2022-FY2024 The 3-year (CY2018-CY2020) average percentage of recreational catches relative to US fisheries total catches (20.6%) applied to the proposed FY2022 US ABC (343 mt) results in a GB cod recreational catch target of 71 mt. This three year option normalizes the highs (2020) and lows (2018) observed over this three year period.
- *Option 2* is based on an ABC percentage over the same three year period resulting in a 43 metric ton recreational quota. A five year average was also estimated that resulted in a much higher value than Option 3. Ultimately the 5 year option appears too high and Option two appears to low. Option 3 is an attempt to reach middle ground and appears to be a reasonable approach. We are hesitant to approve any options when an ABC has yet to be established. As a result, we question these Options until ABC is final.

### **Georges Bank Recreational Seasons and Bag Limits**

- The following measures were proposed, but at the time it was not clear if the options would achieve the 73% reduction.

#### **Approach A**

- Slot limit 22 in to 28 in fish size
- 5 fish bag limits
- To prioritize the closed season measure to achieve conservation goals, as:
  - First choice- May 1 to July 31 (Wave 3 and Partial Wave 4)
  - Second choice- July and August (Wave 4)



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### **Approach B**

- 23 inch size limit
- 5 fish bag limits
- Closed season Waves 2 & 3
- June, July and August are very important months. The reduction of the bag limit to five fish with the additions of a season closure will have long lasting and devastating consequences for the for hire industry. There will be behavioral changes for the fishing public that will have significant negative social and economic impacts on the for hire sector. We ask that any reductions be spread over a wide geographic range with season restrictions as to not impact one area more than another.
- As a result, closure during Waves 2 & 3 are recommended to achieve the proposed quota reduction to keep us on the water from June through August.
- It should be noted that increased recent catch of recreational cod during Waves 2 & 3 in 2020 may also be reflected in 2021 that would require proactive measures that would not be implemented until 2022. Therefore, closure during Waves 2 & 3 may be necessary to achieve the conservation goals.

Ultimately there is much at stake and the proposed measures will have a significant impact on the for hire and recreational anglers and all of those that rely on such to make a living. If you have any questions or comments, please contact me at the email below.

Very truly yours,

*Capt Rick Golden*

Capt. Rick Golden  
SBCBA, Secretary  
[captrick@1620anglers.com](mailto:captrick@1620anglers.com)



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Cc: Tom Nies, NEFMC  
Mike Pentony, GARFO  
Russell Dunn, NOAA  
Moiria Kelly, GARFO  
Rick Bellivance, Chairman, Groundfish Committee  
Frank Blount, Chairman, RAP  
Dan McKiernan, MassDMF  
Melaney Griffin, MassDMF  
Ron Amidon, MassF&G  
Barry Gibson, RFA of New England

-----Original Message-----

From: Bounty Hunter Charters <capteric@fishbountyhunter.com>

Sent: Thursday, December 2, 2021 9:02 AM

To: comments <comments@nefmc.org>

Cc: Michael Pierdinock <cpfcharters@yahoo.com>

Subject: Proposed George's Bank Cod Recreational Measures

To whom it might concern:

Although any reduction in the bag limit or season will have a negative impact on the "for-hire" fishery. The only option I can support is "Approach B". Reducing the bag limit to 5 is going to cut out business significantly, since it regulates us out of a species specific fishery. Our clients will simply not pay what we need to charge on an offshore trip for 5 fish a man. Therefore it is imperative that we maintain an open season as long as possibly during the summer months so we can promote "mixed bag" trips while the weather conditions are more favorable, and might be able to target more of a "tourist" clientele that would be interested a mixed bag trip. As an industry we are constantly seeing our available resources to target reduced every year. It gets harder to promote a business model, as the "bag limits" are reduced. We are selling an opportunity to reach that bag limit. We are not looking to fill the limit daily, but rather sell the seats on the boat with the hopes of getting their "limit".

Sincerely, Eric Morrow

Bounty Hunter Charters

Sent from my iPhone

## ASSOCIATED FISHERIES OF MAINE

## NORTHEAST SEAFOOD COALITION

December 3, 2021

Mr. Eric Reid, Chair  
New England Fishery Management Council  
VIA ELECTRONIC MAIL

Dear Eric:

We write to oppose a 2022 priority for groundfish that would set an ABC equal to zero for Georges Bank yellowtail.

Groundfish vessels continue to do their part to rebuild the stock of GB yellowtail and to avoid accountability measures by successfully maintaining catch of GB yellowtail below the sector sub-ACL. Other users of the GB yellowtail resource must do their part.

We cannot identify any benefit that would flow to the groundfish industry by setting an ABC to zero, particularly after a stock has been allocated to groundfish sectors.

- 1) Setting an ABC to zero would eliminate the incentive for both groundfish and scallop vessels to minimize catch of GB yellowtail. To date, groundfish sectors have been successful in minimizing catch of GB yellowtail.
- 2) Setting an ABC to zero would strip groundfish sectors of any economic benefits derived from both landings of GB yellowtail and lease of GB yellowtail ACE.
- 3) Setting an ABC to zero, even for a short timeframe, would negatively impact the value of groundfish permits.
- 4) There is no approved assessment model for GB yellowtail. Discarding catch data would be detrimental to improving stock status.
- 5) Setting an ABC to zero would be in contradiction to the goals and objectives of the sector management system.
- 6) Amendment 16 describes a process to evaluate sector management measures against stated goals including a) “addressing bycatch” and/or b) “giving industry greater control over their own fate”. A zero ABC would contradict the need to keep GB yellowtail bycatch low and would inhibit sectors’ ability to control their own fate.
- 7) Setting an ABC to zero would require discarding of any GB yellowtail caught. Amendment 16 explicitly prohibits the discarding of legal-size fish.
- 8) Setting an ABC at zero would be in contradiction to sector monitoring goals described in Amendment 23, like
  - Improving documentation of catch
  - incentivizing reduced discards and
  - providing additional data stream for stock assessments.

None of these goals are achieved by requiring all contributors to GB yellowtail mortality to discard catch.

Finally, it is indefensible to burden groundfish sectors with the cost of 100% monitoring only to then require sector vessels to discard a valuable source of revenue.

We do support 2022 priorities for groundfish approved by the Groundfish Advisory Panel (11/22/21) Groundfish Committee (11/30/2021).

Sincerely,

Maggie Raymond, Executive Director  
Associated Fisheries of Maine

Jackie Odell, Executive Director  
Northeast Seafood Coalition

December 3, 2021

Mr. Eric Reid, Chairman  
New England Fishery Management Council  
Via: Email

Dear Eric,

We are writing to support a remand of the Georges Bank cod (GB cod) Acceptable Biological Catch (ABC) back to the Council's Scientific and Statistical Committee (SSC) for reevaluation.

When the SSC met on October 25, 2021, the SSC did not have all the relevant information available when considering the ABC recommendation for GB cod. SSC members did not have socio-economic information, as outlined in the Council's Risk Policy Road Map, nor did they have final catch information from the 2020 fishing year that offers a different signal for the resource.

On November 19, 2021, a month after the SSC meeting, NOAA Fisheries Regional Office (GARFO) released the final 2020 catch report. This report states that the recreational fishery (combination of federal recreational and state waters) caught 294.4 mt of GB cod in 2020. *This 2020 catch represents roughly 85% of the 343 mt that would be made available to ALL U.S. fisheries in 2022-2024, based upon the recent GB cod assessment report and SSC recommendation. This high 2020 catch is occurring in areas not factored into the PlanBsmooth empirical assessment for GB cod. This is incongruent with the purported status of the resource.*

Continuing to rely upon a "noisy," "data limited" PlanBsmooth assessment which only factors in three years of Georges Bank survey strata/data, with one year missing due to the pandemic, is a serious problem. An SSC recommendation that represents an 80% reduction in the allowable catch for U.S. fisheries using this limited approach without factoring in the signal from the 2020 catch information is wrong.

During the SSC meeting, there was limited to no socio-economic (commercial and recreational) information for the SSC to evaluate the economic risks associated with the highly uncertain assessment and the ABC derived. This is not only counter to the directive offered by the Council's own Risk Policy but it is also inconsistent with how other FMPs provide socio-economic data for SSC consideration and deliberations under a Risk Policy Matrix.

To conclude, we implore the Council to offer a remand to the SSC that factors in all the relevant information available and reconsiders the ABC advice in a manner which does not result in an extended delay of Framework 63.

Specifically, the SSC should evaluate the economic and biological impacts associated with a phased in approach as outlined in the SSC minority report, whose linear decline represents a substantial conservation benefit. This request is consistent with the Council's ABC Control Rule:

*Option d.: Interim ABCs should be determined for stocks with unknown status according to case-by case recommendations from the SSC.*



It is also consistent with prior SSC recommendations on GB cod, October 23, 2017 SSC report.

9. Recommend that the “PlanBsmooth” approach be simulation tested to answer questions about the assessment techniques stability and that other control rule options be investigated such as capping the proportional change from year to year when using this approach.

The Council has also supported a phased approach under their comments for National Standard 1 that we view is warranted now under this circumstance.

The commercial and recreational fishery deserve an SSC evaluation that includes all relevant information before being subjected to the economic losses derived from an assessment approach which is rife with uncertainty.

Sincerely,

Jackie Odell, Executive Director  
Northeast Seafood Coalition

Maggie Raymond, Executive Director  
Associated Fisheries of Maine

# SUSTAINABLE HARVEST SECTOR

PO Box 667, Somersworth NH 03878 | 207-956-8497 | [www.groundfish.org](http://www.groundfish.org)

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December 3, 2021

Tom Nies, Executive Director  
New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01950

Dear Tom,

We write to oppose the Council prioritizing setting the Georges Bank yellowtail ACL in 2022 to zero. This is a de facto taking of allocation from the groundfishery that will reduce groundfish permit values, degrade catch accounting, decrease revenues to both groundfish permit holders and the supporting sector management structure, and erode fleet conservation incentives. It is antithetical to the Council's fishery management objectives as implemented in Amendments 16 and 23. There is no looming financial crisis in any fishery which warrants increasing catch uncertainty for this depleted stock.

In a November 12 memo to the Council's Executive Committee, you noted staff time devoted to groundfish in 2022 would be reduced in favor of other priorities, and said the need to address inadequate rebuilding progress was likely to consume much of that time (and is thus by inference a priority). Setting the GB yellowtail ACL to zero contributes nothing to addressing rebuilding progress. Other items, such as crafting adjustments to management measures resulting from cod stock structure research, would do so. It is a mystery to industry how elimination of an ACL vaulted to the top of the Council's priority list for groundfish.

When faced with a low ACL, the groundfishery is required to adopt measures to reduce catch of that stock, such as area closures and selective gear requirements. Sectors themselves implement further conservation measures, including wider area closures and ACE reserves to prevent exceeding catch limits. We have long noted the irony that the most accountable and intensively monitored fishery in the region – our own – is granted the remnants of quota that remain after other fisheries, with less effective monitoring or accountability measures, receive their fill. At the very least, those fisheries should adopt more stringent catch control measures before consideration of simply vaporizing an ACL.

For these reasons, plus the lack of an articulated problem statement from any Council entity to date, we request the Council remove this zero-ACL item from the 2022 priority list.

Sincerely,



Hank Soule  
Sector Manager



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
GREATER ATLANTIC REGIONAL FISHERIES OFFICE  
55 Great Republic Drive  
Gloucester, MA 01930

December 14, 2021

Eric Reid  
Chairman  
New England Fishery Management Council  
50 Water Street Mill 2  
Newburyport, MA 01950

Dear Eric:

The total target level of at-sea monitoring (ASM) coverage required for Northeast multispecies sectors in fishing year 2022 will be 99 percent of all sector trips subject to the at-sea monitoring program. An ASM target coverage level of 99 percent is the highest level I am allowed to set under the regulations. This target level helps address bias, supports the collection of information and data that will help make future determinations of appropriate ASM coverage levels, and provides the additional benefit of preparing our ASM infrastructure for higher required coverage, if Amendment 23 is approved. I am announcing my determination now to allow time for us to support increased coverage, for monitoring providers to hire and train additional staff, for sectors to negotiate with providers to contract for services, and for industry members to make decisions for fishing year 2022. In the event that Amendment 23 is not approved, I may re-evaluate my coverage level determination if public comments on the Amendment or our Amendment 23 decision merit revisiting our 2022 target coverage level determination.

Each year, we complete an analysis to determine the level of ASM coverage required to estimate discards for each Northeast multispecies stock with no greater than a 30-percent coefficient of variation (CV). However, as a result of the COVID-19 health emergency, gaps in available observer and monitoring data for fishing year 2020 prevented us from completing a CV analysis to inform the 2022 target coverage level, which normally would have relied on data from the 2020 fishing year. Since fishing year 2020, in addition to the CV analysis, we have also considered the four analyses of bias developed by the Groundfish Plan Development Team (PDT) and the peer review by a sub-panel of the Council's Scientific and Statistical Committee (SSC)<sup>1</sup>. I previously determined in fishing years 2020 and 2021 that it would be inappropriate to base the target coverage level solely on the results of the CV analysis, and instead set the fishing coverage level target at a level that aimed to address bias to the extent practicable. Similarly, the

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<sup>1</sup> The SSC sub-panel concluded that "(T)he set of studies provide substantial support to conclude that there are differences both in discarding behavior and in fishing behavior between observed and unobserved trips. The analyses suggest that discard estimates from observed trips should not be used to estimate discards from unobserved trips, or at minimum not without some adjustments. In addition, this suggests it is not appropriate to determine a level of observer coverage that should be deployed by considering the coefficient of variation of discard estimates from observer coverage since observed trips are not representative of unobserved trips."



2022 target coverage level must continue to account for bias beyond previous coverage levels in light of the PDT's and SSC sub-panel's conclusions. The precise level of coverage under 100 percent that sufficiently removes or reasonably accounts for bias remains unknown. There is still not sufficient information available to make this determination, and to date both we and the PDT have been unable to develop a new method or analysis for calculating this precise target coverage below 100 percent.

We expect to continue to have funding available to reimburse industry for all of its at-sea monitoring costs in fishing year 2022, including sector costs for electronic monitoring. If you have further questions about the fishing year 2022 ASM coverage target, please contact Sarah Bland, Assistant Regional Administrator for Sustainable Fisheries, at (978) 281-9257.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Pentony", with a stylized flourish at the end.

Michael Pentony  
Regional Administrator



## New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
Eric Reid, *Chair* | Thomas A. Nies, *Executive Director*

January 3, 2022

Mr. Michael Pentony  
Greater Atlantic Regional Administrator  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

Dear Mike:

In accordance with provisions of the Magnuson-Stevens Act, I reviewed the draft regulatory text for Amendment 23 to the Northeast Multispecies (Groundfish) Fishery Management Plan in order to deem whether it is consistent with the amendment text and the Council's intent. I based the review on the draft regulatory text (version 2) provided to the Council on Nov. 18, 2021, further modified through discussions between our staffs and finalized on December 27, 2021. I concluded the agreed upon revised regulatory text implementing Amendment 23 measures is consistent with Council intent. I am not commenting on the regulation corrections provided in the same correspondence.

Please feel free to call me with any concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'ER', is placed above the name Eric Reid.

Eric Reid, Chair

**Draft Regulatory Text  
NE Multispecies Amendment 23**

For the reasons stated in the preamble, the National Marine Fisheries Service proposes to amend 50 CFR part 648 as follows:

**PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 648.2 is amended by:

- a. Revising the definition for “electronic monitoring”;
- b. Adding a new definition for “electronic monitoring audit model”;
- c. Adding a new definition for “electronic monitoring maximized retention model”;
- d. Adding a new definition for “electronic monitoring provider staff”;
- e. Revising the definition of “observer or monitor”; and
- f. Deleting the definition of “observer/sea sampler”.

**§ 648.2 Definitions.**

\* \* \* \* \*

**Electronic monitoring** means a network of equipment that uses a software operating system connected to one or more technology components, including, but not limited to, cameras and recording devices to collect data on catch and vessel operations. With respect to the NE multispecies fishery, electronic monitoring means any equipment that is used to meet sector monitoring requirements in lieu of at-sea monitors as part of an approved Sector at-sea monitoring program, including the audit model and maximized retention model.

**Electronic monitoring audit model** with respect to the groundfish sector monitoring program means a program in which all eligible trips must be electronically monitored; discards are reported at the haul level; fish must be handled in view of cameras; species identification and length must be collected for regulated species and ocean pout discards for catch estimation; allowed discarding must occur at controlled points in view of cameras; and electronic monitoring data is compared to the area fished, regulated species and ocean pout discards, and other information reported on the vessel trip report on a subset of trips for validation.

**Electronic monitoring maximized retention model** with respect to the groundfish sector monitoring program, means a program in which all eligible trips are electronically monitored; fish must be handled in view of cameras; allowed discarding must occur at controlled points in view of cameras; all allocated regulated species stocks must be retained; electronic monitoring is used to verify compliance; and offloads are subject to observation by dockside monitors.

\* \* \* \* \*

**Electronic monitoring provider staff** means any video reviewer, or any person employed or contracted by an electronic monitoring service provider to provide electronic monitoring services to vessels.

\* \* \* \* \*

**Observer or monitor** means any person who collects observer information, operational fishing data, biological data, or economic data for conservation and management purposes on or from fishing vessels or federally permitted dealers as required by the regulations, including, but not limited to, observers, at-sea monitors, observer/sea samplers, portside samplers, or dockside monitors.

**Ocean quahog** means the species *Arctica islandica*.

\* \* \* \* \*



3. Section 648.11 is amended by:
- a. Revising paragraph (h);
  - b. Redesignating paragraphs (i)(5) and (6) as paragraphs (i)(6) and (7);
  - c. Adding a new paragraph (i)(5);
  - d. Revising newly redesignated paragraphs (i)(6) and (7);
  - e. Revising paragraph (j);
  - f. Redesignating paragraph (l)(1) as (l)(3), paragraph (l)(2) as (l)(4) and paragraph (l)(3) as (l)(1);
  - g. Adding a new paragraph (l)(2);
  - h. Revising newly redesignated paragraphs (l)(1) through (3); and
  - i. Adding new paragraphs (l)(5) through (10).

The revisions read as follows:

**§ 648. 11 Monitoring coverage.**

\* \* \* \* \*

(h) \* \* \*

(3) \* \* \*

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

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

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

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

(viii) \* \* \*

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

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

\* \* \* \* \*

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

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

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

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

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

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

(D) \* \* \*

**(iii) Deployment logistics.**

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

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

\* \* \* \* \*

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

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

(vii) \* \* \*

**(A) Deployment reports.**

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

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

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

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

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

(E) **Availability report.** The monitoring service provider must report to NMFS any inability to respond to an industry request for observer or monitor coverage due to the lack of available observers or monitors as soon as practicable. Availability report must be available and accessible to NMFS electronically 24 hours a day, 7 days a week.

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

(G) **Status report.**

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

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

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

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

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

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

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

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



(I) The number of at-sea monitor deployments and other approved monitoring equipment deployments or video reviews, including any refusal to provide service when requested and reasons for such refusals;

(2) Incident/non-compliance reports (e.g., failure to offload catch); and

(3) Vessel hail reports and landings records.

(4) Electronic monitoring data and reports.

(5) A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act.

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

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

The software must:

(I) Support a "dual user" system that allows NMFS to complete and submit secondary reviews to the application programming interface.

(2) Allow for the export or download of electronic monitoring data in order for the agency to make a copy if necessary.

(O) Provide software training for NMFS staff.

(P) Provide the following to NMFS upon request:

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

(2) Responses to inquiries related to data summaries, analyses, reports, and operational issues;

(3) Access to video reviewers for debriefing sessions;

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

\* \* \* \* \*

**(i) Observer, monitor, video reviewer certification -**

(1) **Requirements.** To be certified as an observer, or monitor, or video reviewer, a monitoring service provider employee or contractor must meet the criteria in paragraphs (i)(1) through (3) for observers, or paragraphs (i)(1), (2), and (4) for monitors, and paragraphs (i)(1), (2), and (5) for video reviewers, respectively. In addition, observers must meet NMFS National Minimum Eligibility Standards for observers specified at the National Observer Program website:

<https://www.fisheries.noaa.gov/topic/fishery-observers#become-an-observer>.

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

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

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

\* \* \* \* \*

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

(i) \* \* \*

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

\* \* \* \* \*

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

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

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

and

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

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

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

**(j) Coverage.** In the event that a vessel is requested by the Regional Administrator to carry a NMFS-certified fisheries observer pursuant to paragraph (a) of this section and is also selected to carry an at-sea monitor as part of an approved sector

at-sea monitoring program specified in paragraph (l) of this section for the same trip, only the NMFS-certified fisheries observer is required to go on that particular trip.

Vessels using electronic monitoring to satisfy the groundfish sector monitoring program requirement must comply with their vessel monitoring plan on all trips, including a trip that has been selected to carry, or a trip that carries, a fisheries observer.

\* \* \* \* \*

(l) \*\*\*

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

(i) Improve documentation of catch:

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

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

(ii) Reduce the cost of monitoring:

(A) Streamline data management and eliminate redundancy;

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

(C) Recognize opportunity costs of insufficient monitoring.

(iii) Incentivize reducing discards:

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

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

(iv) Provide additional data streams for stock assessments:

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

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

(v) Enhance safety of monitoring program.

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

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

programs, including vessel monitoring plans, as part of a sector's operations plans in a manner consistent with the Administrative Procedure Act.

(3) **Pre-trip notification.** For the purpose of selecting vessels for observer or at-sea monitor deployment, as instructed by the Regional Administrator, the owner, operator, or manager of a vessel (i.e., vessel manager or sector manager) issued a limited access NE multispecies permit that is fishing under a NE multispecies DAS or on a sector trip, as defined in this part, must provide advance notice to NMFS at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery pursuant to § 648.10 or § 648.85 of the following: The vessel name, permit number, and sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer or at-sea monitor deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished, whether a monkfish DAS will be used, and gear type to be used, unless otherwise specified in this paragraph (l) or notified by the Regional Administrator. For trips lasting 48 hr or less in duration from the time the vessel leaves port to begin a fishing trip until the time the vessel returns to port upon the completion of the fishing trip, the vessel owner, operator, or manager may make a weekly notification rather than trip-by-trip calls. For weekly pre-trip notification, a vessel must notify NMFS by 0001 hr of the Friday preceding the week (Sunday through Saturday) that it intends to complete at least one NE multispecies DAS or sector trip during the following week and provide the vessel's trip-plans for that week, including each trip's date, time, port of departure, area to be fished, whether a monkfish DAS will be used, and gear type to be used. Pre-trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS

of any trip plan changes at least 24 hr prior to vessel departure from port. A vessel may not begin the trip without being issued either an observer notification, an at-sea monitor notification or a waiver by NMFS.

**(4) Vessel selection for observer or at-sea monitor coverage.** NMFS shall notify the vessel owner, operator, or manager whether the vessel must carry an observer or at-sea monitor for the specified trip within 24 hr of the vessel owner's, operator's or manager's pre-trip notification of the prospective trip, as specified in paragraph (1)(2) of this section. All pre-trip notifications shall be issued a unique confirmation number. A vessel may not fish on a NE multispecies DAS or sector trip with an observer waiver confirmation number that does not match the vessel's trip plan that was called in to NMFS. Confirmation numbers and the vessel's observer or observer waiver status for pre-trip notification calls remain valid for 48 hr from the intended sail date. After a trip begins, that trip's confirmation number and observer or observer waiver status remains valid until the trip ends. If a trip is interrupted and the vessel returns to port due to bad weather or other circumstance beyond the operator's control, the vessel's observer or observer waiver status and confirmation number for the interrupted trip remains the same if the vessel departs within 48 hr from the vessel's return to port. If the layover time is greater than 48 hr, the vessel owner, operator, or manager must provide a new pre-trip notification.

If an observer or at-sea monitor is assigned to a particular trip, a vessel may not leave port without the at-sea monitor on board, unless NMFS issues a waiver. If a vessel is using electronic monitoring to comply with the monitoring requirements of this part, it



may not leave port without an operational electronic monitoring system on board, unless NMFS issues a waiver, or assigned other at-sea monitoring coverage.

(5) Sector **monitoring coverage levels.** Coverage levels for an at-sea or electronic monitoring program, including video review requirements, shall be specified by NMFS, pursuant to paragraph (1)(5)(i) of this section.

(i) **At-sea monitoring coverage target** The at-sea monitoring coverage target for the sector monitoring program will be set as a percentage of all eligible sector trips based on available federal funding for NMFS and industry cost responsibilities as defined in paragraph (g)(3) of this section. Sectors are responsible for industry costs for at-sea monitoring coverage up to the coverage target for all trips not observed by a Northeast Fishery Observer Program observer. In fishing years 2022, 2023, 2024, and 2025, the ASM coverage target will be set at the highest level that available federal funding for NMFS and industry cost responsibilities supports, up to 100 percent of trips. Beginning in fishing year 2026, the target coverage will be set at 40 percent of trips, unless replaced by the Council after a review, as detailed in paragraph (1)(5)(v). In the absence of available federal funds sufficient to fund both NMFS costs and industry costs associated with a coverage target of at least 40 percent of all sector trips, sectors must pay the industry's costs for coverage necessary to achieve a 40-percent coverage target. As an example, if, after paying NMFS costs, available federal funding is sufficient only to fund industry costs for 15-percent coverage, sectors must pay the industry costs for the remaining 25-percent coverage to achieve a 40-percent coverage target. Any coverage provided by the Northeast Fisheries Observer Program through deployment of an observer would be deducted from the industry's cost responsibility. To ensure coverage

is both sufficient to monitor sector catch, discards, and sector ACE; and consistent with sector monitoring goals and objectives, at-sea monitoring coverage may be higher than the at-sea monitoring coverage target, up to 100 percent of all eligible trips, if available federal funding is sufficient for NMFS and industry cost responsibilities, respectively.

NMFS will announce the coverage target at least 3 weeks before the annual sector enrollment deadline set by NMFS, if federal funding information is available.

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

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

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

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

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

(C) **Set-only trip waivers.** Vessels on a set-only trip, as defined at § 648.2, are excluded from the groundfish sector monitoring program requirements in this paragraph

648.11(1). If a vessel is using electronic monitoring to comply with the monitoring requirements of this part, that vessel may turn off its cameras on a set-only trip.

(v) **Review of exclusions from the at-sea monitoring program.** A Council review of the exclusions from the at-sea monitoring program in paragraphs 648.11(1)(5)(ii) and (iii) will evaluate whether the exclusions continue to meet the intent of the Council to exclude trips with little catch of regulated species and ocean pout. The review will be conducted using complete data from 2 fishing years once the data is available (fishing years 2022 and 2023) and every 3 years after the initial review.

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

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

monitoring program required by paragraph (l)(2) of this section, or specified in the annual sector operations plan, consistent with section 648.87(b)(5).

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

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

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

**(i) Vessel requirements -**

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

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

(2) Conduct a system check of the electronic monitoring system prior to departing on a fishing trip. An electronic monitoring system check must show that the electronic monitoring system is fully operational and there is sufficient video storage capacity to retain the recording of the entire fishing trip;

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

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

**(B) Vessel monitoring plan requirements for electronic monitoring vessels.** A vessel must have a NMFS-approved vessel monitoring plan to use electronic monitoring to meet sector monitoring requirements. The vessel monitoring plan describes how an electronic monitoring system is configured on a particular vessel and how fishing operations must be conducted to effectively monitor catch.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

appropriate yellowtail flounder stock's ACL specified for the Atlantic Sea Scallop fishery and not from the yellowtail flounder ACE for the sector.

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

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

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

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

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

(B) **Processing, sorting, and reporting.**

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

(2) Sort by species all redfish, haddock, and pollock, except that fish of the same species below the minimum size specified at 648.83 may be mixed with the same species of fish in the smallest market category.

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

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

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

4. Section 648.14 is revised to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(e) \* \* \*

(1) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any observer or monitor conducting his or her duties; any electronic monitoring provider staff who collects data required under this part; any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part; any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in §§ 648.7(g) and 648.11(l)(10)(v).

(2) Refuse monitoring coverage by an observer or monitor if selected for monitoring coverage by the Regional Administrator or the Regional Administrator's designee.

(3) Fail to provide information, notification, accommodations, access, or reasonable assistance to either an observer, monitor, or electronic monitoring provider staff conducting his or her duties as specified in § 648.11.

\* \* \* \* \*

(k) \* \* \*

(2) \* \* \*

\* \* \*

(vii) Fish under a waiver from the groundfish sector monitoring program issued under § 648.11(l)(5)(ii) or (iii) without complying with the VMS declaration requirements at § 648.10(g)(3) and the pre-trip notification requirements at § 648.11(l)(1).

(3) **Dealer requirements.** It is unlawful for any person to:

(i) Purchase, possess, import, export, or receive as a dealer, or in the capacity of a dealer, regulated species or ocean pout in excess of the possession limits specified in § 648.82, § 648.85, § 648.86, or § 648.87 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17, or unless the regulated species or ocean pout are purchased or received from a vessel that caught them on a sector trip and such species are exempt from such possession limits in accordance with an approved sector operations plan, as specified in § 648.87(c).

(ii) \* \* \*

(iii) Purchase, possess, import, export, or receive as a dealer, or in the capacity of a dealer, regulated species or ocean pout from a vessel participating in the maximized retention electronic monitoring program in § 648.11(l) unless the offload of catch was observed by a dockside monitor or NMFS issued a waiver from dockside monitoring for the trip.

(iv) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any observer or monitor conducting his or her duties or any electronic monitoring staff who collects data required under this part.

(v) Impede a dockside monitors' access to their premises, scales, and any fish received from vessels participating in the maximized retention electronic monitoring program; fail to facilitate dockside monitoring for vessels participating in a maximized retention electronic monitoring program; or fail to process, sort, and

report fish from vessels participating in the maximized retention monitoring program; as required in § 648.11(l)(10)(iv).

\* \* \* \* \*

(14) \* \* \*

(ix) Fail to comply with the reporting requirements specified in § 648.11(l)(10)(iii) and § 648.87(b)(1)(v).

(x) Leave port to begin a trip before an at-sea monitor has arrived and boarded the vessel if assigned to carry an at-sea monitor for that trip, or without an operational electronic monitoring system installed on board, as specified in § § 648.11(l)(3) and (l)(10)(i).

(xi) Leave port to begin a trip if a vessel has failed a review of safety issues by an at-sea monitor and has not successfully resolved any identified safety deficiencies, as prohibited by § 648.11(l)(10)(i)(C).

(xii) Fail to comply with the electronic monitoring system requirements as specified in § 648.11(l)(10)(i)(A), including, but not limited to: ensuring the electronic monitoring system is fully operational; conducting a system check of the electronic monitoring system; ensuring camera views are unobstructed and clear; and ensuring that no person tampers with the electronic monitoring system.

(xiii) Fail to comply with the vessel monitoring plan requirements as specified in § 648.11(l)(10)(i)(B), including, but not limited to: carrying the vessel monitoring plan onboard the vessel at all times; complying with all catch handling protocols and other requirements in the vessel monitoring plan; submitting electronic monitoring data as

required; and making the electronic monitoring system available to NMFS for inspection upon request.



5. Section 648.83 is revised to read as follows:

\* \* \* \* \*

(a) \* \* \*

(1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.11(l)(10)(i)(E) and § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

Minimum Fish Sizes (TL) for Commercial Vessels

Species	Size in inches
Cod	19 (48.3 cm)
Haddock	16 (40.6 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	13 (33 cm)
Yellowtail flounder	12 (30.5 cm)
American plaice (dab)	12 (30.5 cm)
Atlantic halibut	41 (104.1 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	7 (17.8 cm)

\* \* \* \* \*

6. Section 648.85 is amended by:

- a. Redesignating paragraphs (e)(1)(viii)(C)(1) through (C)(7) as paragraphs (C)(3) through (C)(9);
- b. Adding new paragraphs (e)(1)(viii)(C)(1) and (C)(2); and
- c. Revising newly redesignated paragraphs (e)(1)(viii)(C)(5), (C)(6), and (C)(8).

The revisions read as follows:

**§ 648.85 Special management programs.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(viii) \* \* \*

**(C) Administration of Thresholds.**

(1) For the purpose of determining a sector's monthly redfish landings threshold performance described in paragraph (e)(1)(viii)(A)(1) of this section and the annual redfish landings threshold described in paragraph (e)(1)(viii)(B)(1) of this section, landings of allocated regulated species by vessels participating in a maximized retention electronic monitoring program consistent with 648.11(1), including landings of allocated stocks below the minimum size at 648.83(a)(1), will be counted as discards and not landings.

(2) For the purpose of determining a sector's monthly discards threshold performance described in paragraph (e)(1)(viii)(A)(2) of this section, a trip by a vessel participating in a maximized retention electronic monitoring program consistent with 648.11(1) will be excluded from evaluation of the monthly discard threshold.

(3) If a sector fails to meet the monthly redfish landings threshold or the monthly discards threshold described in paragraphs (e)(1)(viii)(A)(I) and (2) of this section for four or more months total, or three or more consecutive months, in a fishing year, the Regional Administrator shall prohibit all vessels in that sector from fishing under the provisions of the Redfish Exemption Program for the remainder of the fishing year, and place the sector and its vessels in a probationary status for one fishing year beginning the following fishing year.

(4) If a sector fails to meet the annual redfish landings threshold described in paragraph (e)(1)(viii)(B)(I) of this section in a fishing year, the Regional Administrator shall place the sector and its vessels in a probationary status for one fishing year beginning the following fishing year.

(5) While in probationary status as described in paragraph (e)(1)(viii)(C)(3) or (4) of this section, if the sector fails to meet the monthly redfish landings threshold or the monthly discards threshold described in paragraphs (e)(1)(viii)(A)(I) and (2) of this section for four or more months total, or three or more consecutive months, in that fishing year, the Regional Administrator shall prohibit all vessels in that sector from fishing under the provisions of the Redfish Exemption Program for the remainder of the fishing year and the following fishing year.

(6) If a sector fails to meet the annual redfish landings threshold in (e)(1)(viii)(B)(I) of this section for any fishing year during which the sector is in a probationary status as described in paragraph (e)(1)(viii)(C)(3) or (4) of this section, the Regional Administrator shall prohibit all vessels in that sector from fishing under the provisions of the Redfish Exemption Program for the following fishing year.

(7) The Regional Administrator may determine a sector has failed to meet required monthly or annual thresholds described in paragraphs (e)(1)(viii)(A) and (B) of this section using available information including, but not limited to, vessel declarations and notifications, vessel trip reports, dealer reports, and observer and electronic monitoring records.

(8) The Regional Administrator shall notify a sector of a failure to meet the required monthly or annual thresholds and the sector's vessels prohibition or probation status consistent with the provisions in paragraphs (e)(1)(viii)(C)(I) through (7) of this section. The Regional Administrator shall also make administrative amendments to the approved sector operations plan and issue sector vessel letters of authorization consistent with the provisions in paragraphs (e)(1)(viii)(C)(I) through (7) of this section. These administrative amendments may be made during a fishing year or during the sector operations plan and sector contract approval process.

(9) A sector may request in writing that the Regional Administrator review and reverse a determination made under the provisions of this section within 30 days of the date of the Regional Administrator's determination. Any such request must be based on information showing the sector complied with the required thresholds, including, but not limited to, landing, discard, observer or electronic monitoring records. The Regional Administrator will review and maintain or reverse the determination and notify the sector of this decision in writing. Any determination resulting from a review conducted under this provision is final and may not be reviewed further.

7. Section 648.86 is revised to read as follows:

**§ 648.86 NE Multispecies possession restrictions.**

Except as provided in § 648.11(1), § 648.17, or elsewhere in this part, the following possession restrictions apply:

(a) \* \* \*

\* \* \* \* \*

8. Section 648.87 is amended by:

- a. Revising paragraph (b)(1);
- b. Removing paragraph (b)(1)(v);
- c. Redesignating paragraphs (b)(1)(vi) through (ix) as paragraphs (b)(1)(v) through (viii);
- d. Revising newly redesignated paragraphs (b)(1)(v), (b)(1)(vi)(B), (b)(1)(vii), and (b)(1)(vii)(C);
- e. Revising paragraph (b)(2); and
- f. Deleting paragraphs (b)(4) and (b)(5).

The revisions read as follows:

**§ 648.87 Sector allocation.**

\* \* \* \* \*

**(b) General requirements applicable to all approved Sectors.**

(1) All sectors approved under the provisions of paragraph (a) of this section must submit the documents specified in paragraphs (a)(1), (b)(2), and (b)(3) of this section, comply with the conditions and restrictions of this paragraph (b)(1), and comply with the groundfish sector monitoring program in § 648.11(l).

\* \* \* \* \*

**(v) Sector reporting requirements.** In addition to the other reporting/recordkeeping requirements specified in this part, a sector's vessels must comply with the reporting requirements specified in this paragraph (b)(1)(v).

**(A) VMS declarations and trip-level catch reports.** Prior to each sector trip, a sector vessel must declare into broad stock areas in which the vessel fishes and submit

the VTR serial number associated with that trip pursuant to § 648.10(k). The sector vessel must also submit a VMS catch report detailing regulated species and ocean pout catch by statistical area when fishing in multiple broad stock areas on the same trip, pursuant to § 648.10(k).

(B) **Weekly catch report.** Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon regulated species and ocean pout landings and discards of vessels participating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each regulated species stock allocated to that particular sector; sector enforcement issues; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 0700 hr on the second Monday after the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the sector operations plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

(C) **Year-end report.** An approved sector must submit an annual year-end report to NMFS and the Council, no later than 60 days after the end of the fishing year, that summarizes the fishing activities of participating permits/vessels, which must include at

least the following information: Catch, including landings and discards, of all species by sector vessels; the permit number of each sector vessel that fished for regulated species or ocean pout; the number of vessels that fished for non-regulated species or ocean pout; the method used to estimate discards by sector vessels; the landing port used by sector vessels; enforcement actions; and other relevant information required to evaluate the biological, economic, and social impacts of sectors and their fishing operations consistent with confidentiality requirements of applicable law.

(D) **Streamlining sector reporting requirements.** The reporting/recordkeeping requirements specified in section 648.11(l) and this paragraph (b)(1)(v) may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(vi) **Interaction with other fisheries -**

(A) **Use of DAS.** A sector vessel must comply with all measures specified for another fishery pursuant to this part, including any requirement to use a NE multispecies DAS. If the regulations of another fishery require the use of a NE multispecies DAS, the DAS allocation and accrual provisions specified in § 648.82(d) and (e), respectively, apply to each trip by a sector vessel, as applicable. For example, if a sector vessel is also issued a limited access monkfish Category C permit and is required to use a NE multispecies DAS concurrent with a monkfish DAS under this part, any NE multispecies DAS used by the sector vessel accrues, as specified in § 648.82(e)(1)(ii) based upon the vessel's NE multispecies DAS allocation calculated pursuant to § 648.82(d)(1)(iv)(B).

(B) **Availability of ACE.** Notwithstanding the requirements in paragraph (b)(1)(vi)(A) of this section, if a sector has not been allocated or does not acquire



sufficient ACE available to cover the catch of a particular stock of regulated species while participating in another fishery in which such catch would apply to the ACE allocated to a sector, vessels participating in that sector cannot participate in those other fisheries unless NMFS has approved a sector operations plan that ensures that regulated species or ocean pout will not be caught while participating in these other fisheries.

(vii) **ACE transfers.** All or a portion of a sector's ACE for any NE multispecies stock may be transferred to another sector at any time during the fishing year and up to 2 weeks into the following fishing year (i.e., through May 14), unless otherwise instructed by NMFS, to cover any overages during the previous fishing year. A sector is not required to transfer ACE to another sector. An ACE transfer only becomes effective upon approval by NMFS, as specified in paragraph (b)(1)(vii)(B) of this section.

(A) **Application to transfer ACE.** ACE may be transferred from one sector to another through written request to the Regional Administrator. This request must include the name of the sectors involved, the amount of each ACE to be transferred, the fishing year in which the ACE transfer applies, and the amount of compensation received for any ACE transferred, as instructed by the Regional Administrator.

(B) **Approval of an ACE transfer request.** NMFS shall approve/disapprove a request to transfer ACE based upon compliance by each sector and its participating vessels with the reporting requirements specified in this part. The Regional Administrator shall inform both sectors in writing whether the ACE transfer request has been approved within 2 weeks of the receipt of the ACE transfer request.

(C) **Duration of transfer.** Notwithstanding ACE carried over into the next fishing year pursuant to paragraph (b)(1)(i)(C) of this section, ACE transferred pursuant

to this paragraph (b)(1)(vii) is only valid for the fishing year in which the transfer is approved, with the exception of ACE transfer requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section, unless otherwise instructed by NMFS.

(viii) **Trip limits.** With the exception of stocks listed in § 648.86(1) and the Atlantic halibut trip limit at § 648.86(c), a sector vessel is not limited in the amount of allocated NE multispecies stocks that can be harvested on a particular fishing trip, unless otherwise specified in the operations plan.

(2) **Operations plan and sector contract.** To be approved to operate, each sector must submit an operations plan and preliminary sector contract to the Regional Administrator no later than September 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. A final roster, sector contract, and list of Federal and state permits held by participating vessels for each sector must be submitted by December 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. The operations plan may cover a 1- or 2-year period, provided the analysis required in paragraph (b)(3) of this section is sufficient to assess the impacts of sector operations during the 2-year period and that sector membership, or any other parameter that may affect sector operations during the second year of the approved operations plan, does not differ to the point where the impacts analyzed by the supporting NEPA document are compromised. Each vessel and vessel operator and/or vessel owner participating in a sector must agree to and comply with all applicable requirements and conditions of the operations plan specified in this

paragraph (b)(2) and the letter of authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified in an approved operations plan as administrative only. If a proposed sector does not comply with the requirements of this paragraph (b)(2), NMFS may decline to propose for approval such sector operations plans, even if the Council has approved such sector. At least the following elements must be contained in either the final operations plan or sector contract submitted to NMFS:

- (i) A list of all parties, vessels, and vessel owners who will participate in the sector;
- (ii) A list of all Federal and state permits held by persons participating in the sector, including an indication for each permit whether it is enrolled and will actively fish in a sector, or will be subject to the provisions of the common pool;
- (iii) A contract signed by all sector participants indicating their agreement to abide by the operations plan;
- (iv) The name of a designated representative or agent of the sector for service of process;
- (v) If applicable, a plan for consolidation or redistribution of ACE detailing the quantity and duration of such consolidation or redistribution within the sector;
- (vi) A list of the specific management rules the sector participants will agree to abide by in order to avoid exceeding the allocated ACE for each stock, including a plan of operations or cessation of operations once the ACEs of one or more stocks are harvested and detailed plans for enforcement of the sector rules;

(vii) A plan that defines the procedures by which members of the sector that do not abide by the rules of the sector will be disciplined or removed from the sector, and a procedure for notifying NMFS of such expulsions from the sector;

(viii) If applicable, a plan of how the ACE allocated to the sector is assigned to each vessel;

(ix) If the operations plan is inconsistent with, or outside the scope of the NEPA analysis associated with the sector proposal/framework adjustment as specified in paragraph (a)(1) of this section, a supplemental NEPA analysis may be required with the operations plan;

(x) Detailed information about overage penalties or other actions that will be taken if a sector exceeds its ACE for any stock;

(xi) Detailed plans for the monitoring and reporting of landings and discards by sector participants, including, but not limited to, detailed information describing the sector's at-sea/electronic monitoring program for monitoring utilization of ACE allocated to that sector; identification of the independent third-party service providers employed by the sector to provide at-sea/electronic monitoring services; the mechanism and timing of any hail reports; a list of specific ports where participating vessels will land fish, with specific exemptions noted for safety, weather, etc., allowed, provided the sector provides reasonable notification to NMFS concerning a deviation from the listed ports; and any other information about such a program required by NMFS;

(xii) ACE thresholds that may trigger revisions to sector operations to ensure allocated ACE is not exceeded, and details regarding the sector's plans for notifying NMFS once the specified ACE threshold has been reached;

(xiii) Identification of any potential redirection of effort into other fisheries expected as a result of sector operations, and, if necessary, proposed limitations to eliminate any adverse effects expected from such redirection of effort;

(xiv) If applicable, description of how regulated species and ocean pout will be avoided while participating in other fisheries that have a bycatch of regulated species or ocean pout if the sector does not have sufficient ACE for stocks of regulated species or ocean pout caught as bycatch in those fisheries, as specified in paragraph (b)(1)(vi)(B) of this section; and

(xv) A list of existing regulations that the sector is requesting exemption from during the following fishing year pursuant to paragraph (c)(2) of this section.

(3) **NEPA analysis.** In addition to the documents required by paragraphs (a)(1) and (b)(2) of this section, before NMFS can approve a sector to operate during a particular fishing year, each sector must develop and submit to NMFS, in conjunction with the yearly operations plan and sector contract, an appropriate NEPA analysis assessing the impacts of forming the sector and operating under the measures described in the sector operations plan.

\* \* \* \* \*

9. In § 648.90, revise paragraphs (a)(2)(iii) and (a)(4)(i)(B) to read Section 648.90 is revised to read as follows:

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(iii) In addition, the PDT may develop ranges of options for any of the management measures in the FMP and the following conditions that may be adjusted through a framework adjustment to achieve FMP goals and objectives including, but not limited to:

- (A) Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.;
- (B) Accumulation limits due to a permit buyout or buyback;
- (C) Modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures;
- (D) Calculation of area-specific ACLs (including sub-ACLs for specific stocks and areas (e.g., Gulf of Maine cod)), area management boundaries, and adoption of area-specific management measures including the delineation of inshore/offshore fishing practices, gear restrictions, declaration time periods;
- (E) Sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, an optional sub-ACL

specific to Handgear A permitted vessels, management uncertainty buffers, and the calculation of PSCs;

(F) Sector administration provisions, including at-sea, electronic, dockside, and other monitoring tools, coverage requirements and processes, monitoring program review, or other measures; sector reporting requirements; vessel-specific coverage levels;

(G) State-operated permit bank administrative provisions;

(H) Measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target);

(I) Changes to administrative measures;

(J) Additional uses for Regular B DAS;

(K) Reporting requirements;

(L) Declaration requirements pertaining to when and what time period a vessel must declare into or out of a fishery management area;

(M) The GOM Inshore Conservation and Management Stewardship Plan;

(N) Adjustments to the Handgear A or B permits;

(O) Gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH;

(P) SAP modifications;

(Q) Revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a

proxy for biomass may be made either through a biennial adjustment or framework adjustment;

(R) Changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs;

(S) and any other measures currently included in the FMP.

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \*

(i) \* \* \*

(B) **ACL recommendations.** The PDT shall develop ACL recommendations based upon ABCs recommended by the SSC and the pertinent recommendations of the Transboundary Management Guidance Committee (TMGC). The ACL recommendations of the PDT shall be specified based upon total catch for each stock (including both landings and discards), if that information is available. The PDT shall describe the steps involved with the calculation of the recommended ACLs and uncertainties and risks considered when developing these recommendations, including whether different levels of uncertainties were used for different sub-components of the fishery and whether ACLs have been exceeded in recent years. Based upon the ABC recommendations of the SSC and the ACL recommendations of the PDT, the Council shall adopt ACLs that are equal to or lower than the ABC recommended by the SSC to account for management uncertainty in the fishery. In years that the coverage target for the groundfish sector



monitoring program specified in § 648.11(l) is set at 100 percent, the management uncertainty buffer will default to zero for the sector sub-ACL for the allocated regulated species stocks specified at § 648.87(b)(1)(i)(A), but the need for a management uncertainty buffer for the sector sub-ACL will continue to be evaluated as part of each specification action. The PDT will recommend an appropriate management uncertainty buffer for the sector sub-ACLs if 100-percent monitoring coverage is determined not to be effective, or if any additional elements evaluated when setting the management uncertainty buffers have the potential to result in catches that could exceed ACLs.

\* \* \* \* \*



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
GREATER ATLANTIC REGIONAL FISHERIES OFFICE  
55 Great Republic Drive  
Gloucester, MA 01930

January 7, 2022

Thomas A. Nies  
Executive Director  
New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01950

RE: Request for Changes to the Final Environmental Impact Statement for Amendment 23 to the Northeast Multispecies Fishery Management Plan

Dear Tom:

We discovered that during our review of the draft Amendment 23 final environmental impact statement that the New England Fishery Management Council submitted on April 30, 2021, we failed to provide your staff with the final approved text for the Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis contained in Chapter 9. Enclosed is the correct text addressing consistency with Executive Order 12866 and the Regulatory Flexibility Act. Council and GARFO staff have already discussed the attached text and have coordinated on how to incorporate the necessary changes. As requested, my staff provided a detailed list of the text changes to your staff. There are three changes (highlighted in the enclosure): A new section in the Regulatory Impact Analysis titled "Monitoring Costs Reimbursed by NMFS Under 100% Monitoring" on pages 16-17; and two new sentences in the Initial Regulatory Flexibility Analysis on pages 20 and 22. I apologize for this oversight on our part. We appreciate your quick turnaround of the revised document, to ensure that we can file the final environmental impact statement with the Environmental Protection Agency and complete the amendment review and rulemaking process expeditiously.

Sincerely,

Michael Pentony  
Regional Administrator

Enclosure





**Northeast Multispecies Fishery Management Plan  
DRAFT Amendment 23  
Regulatory Impact Review and  
Initial Regulatory Flexibility Act Analysis**

**January 2022**

**Prepared by the  
New England Fishery Management Council  
In consultation with the  
National Marine Fisheries Service**

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# **1. REGULATORY IMPACT ANALYSIS (RIA)**

## **1.1 Introduction**

Executive Order 12866 requires a Regulatory Impact Analysis (RIA) in order to enhance planning and coordination with respect to new and existing regulations. This Executive Order requires the Office of Management and Budget to review regulatory programs that are considered to be “significant.” This RIA demonstrates that this action is not a “significant regulatory action.”

Executive Order 12866 requires a review of proposed regulations to determine whether or not the expected effects would be significant. A significant regulatory action is one that may:

1. Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The Northeast Multispecies Fishery Management Plan (FMP) specifies the management measures for thirteen groundfish species (cod, haddock, yellowtail flounder, pollock, plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, redfish, ocean pout, and Atlantic wolffish) off the New England and Mid-Atlantic coasts. Some of these species are subdivided into individual stocks that are attributed to different geographic areas. Commercial and recreational fishermen harvest these species. The commercial groundfish fishery consists of primarily “sectors” as well as the “common pool.” The regulations at 50 CFR § 648.87 define a sector as “[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding Northeast multispecies limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a total allowable catch (TAC) in order to achieve objectives consistent with applicable FMP goals and objectives.” Each sector receives a total amount (in pounds) of fish it can harvest for each stock. Fishermen who do not join a sector fish in the “common pool”. Vessels in the common pool are allocated a certain number of Days at Sea (DAS). Vessels that fish in the common pool are managed by a variety of input and effort controls such as DAS, trip limits, closed areas, minimum fish sizes, and gear restrictions. These effort controls are subject to in-season adjustments. The FMP has been updated through a series of amendments and framework adjustments.

Amendment 16, which became effective on May 1, 2010, adopted a broad suite of management measures to achieve the fishing mortality targets necessary to rebuild overfished stocks and meet other requirements of the M-S Act. Amendment 16 greatly expanded the sector management

program and adopted a process for setting Annual Catch Limits (ACLs) that requires catch levels to be set in biennial specifications packages. This action included a host of mortality reduction measures for “common pool” (i.e. nonsector) vessels and the recreational component of the fishery. A detailed discussion of the history of the FMP up to 2009 can be found in Amendment 16 (NEFMC 2009b).

Most relevant to this action, Amendment 16 also updated the requirements for sector and common pool monitoring programs, including at-sea monitoring and dockside monitoring requirements. Following that action, Framework 45 made adjustments to the dockside monitoring program. Framework 48 later discontinued the dockside monitoring program. Additionally, Framework 48 specified the overall goals and objectives of the groundfish monitoring program (Section 3.3.2). Framework 55 clarified that the primary goal of the monitoring program is to verify area fished, catch, and discards by species and gear type; and should be done in the most cost effective means practicable. Framework 55 further clarified that all other goals and objectives of groundfish monitoring programs are considered equally-weighted secondary goals.

## **1.2 Description of Management Objectives**

### *Goals and Objectives of the Northeast Multispecies FMP*

The goals and objectives of the Northeast Multispecies FMP remain as described in Amendment 13 (for example, manage the Northeast multispecies complex at sustainable levels, consistent with the National Standards and other required provisions of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law; achieve, on a continuing basis, optimum yield for the U.S. fishing industry), as well as the goals in Amendment 18, and will continue to frame the long-term management of the resource and fishery. Section 2.3 of Amendment 13 presents the overall goals and objectives of the Northeast Multispecies FMP, and Section 3.3.2 of Amendment 18 includes a description of the goals that were added to the overall program specific to promoting fleet diversity and several other goals.

### *Goals and Objectives of groundfish monitoring program*

Framework 48 to the Multispecies FMP specified the overall goals and objectives of the groundfish monitoring program. Framework 55 clarified that the primary goal is to verify area fished, catch, and discards by species and gear type; and should be done in the most cost effective means practicable. Framework 55 further clarified that all other goals and objectives of groundfish monitoring programs at §648.11(l) are considered equally-weighted secondary goals. The goals and objectives of the groundfish monitoring program, are as follows:

#### Goal 1: Improve documentation of catch

##### Objectives:

- Determine total catch and effort, for each sector and common pool, of target or regulated species.
- Achieve coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability.

## Goal 2: Reduce cost of monitoring

### Objectives:

- Streamline data management and eliminate redundancy.
- Explore options for cost-sharing and deferment of cost to industry.
- Recognize opportunity costs of insufficient monitoring.
- 

## Goal 3: Incentivize reducing discards

### Objectives:

- Determine discard rate by smallest possible strata while maintaining cost-effectiveness.
- Collect information by gear type to accurately calculate discard rates.

## Goal 4: Provide additional data streams for stock assessments

### Objectives:

- Reduce management and/or biological uncertainty.
- Perform biological sampling if it may be used to enhance accuracy of mortality or recruitment calculations.

## Goal 5: Enhance safety of monitoring program

## Goal 6: Perform periodic review of monitoring program for effectiveness

### *Goals and Objectives of Amendment 23*

This action would maintain the current goals and objectives of the groundfish monitoring program described above (Section 3.3.2), but consider measures to better address Goal #1: improve documentation of catch, described as “improved catch accounting” during the scoping process for this action. The objectives associated with that goal are: 1) determine total catch and effort, for each sector and common pool, of target or regulated species; and 2) achieve coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability.

Goals and Objectives of this Amendment are described more fully in Section 3.3.3 of the accompanying EIS.

## **1.3 Need for Regulatory Action**

This action was developed to implement new measures to improve the reliability and accountability of catch reporting in the commercial groundfish fishery, ensuring precise and

accurate representation of landings and discards. Accurate catch data are necessary to ensure that catch limits are set at levels that prevent overfishing and to curtail fishing operations when catch limits are exceeded. Accounting of landings in this fishery is primarily reported via dealers and vessel captains, while discards are reported by human at-sea monitors, assigned algorithmically to fishing trips based on a target coverage rate established at the beginning of each fishing year.

Catch of commercial groundfish in the sector component of the fishery is managed via a quota system, where pounds of each groundfish species (ACE) are allocated annually to sectors (essentially cooperatives) and all fish caught, including discards, must be accounted against these quota shares. Quota shares may be “leased” (traded) between sectors, with each sector agreeing to a lease price prior to executing the trade. All catch that is discarded or landed illegally, without accounting, will incur no leasing costs.

Inaccurate catch data also negatively impacts the quality of the stock assessments that underly the sectors’ annual ACE allocations. Therefore, inaccurate catch data will lead to more uncertain and variable assessment results and, should true catch (including any unreported landings or discards) exceed established catch limits, reduced fishable biomass and lower annual ACE allocations.

Analyses have demonstrated that the previous method for determining observer coverage rates, which seek to limit the variability of discard estimates determined from the sample of trips covered to a coefficient of variation (CV) at or below 30%, are statistically inappropriate because observed trips (sample) are not representative of all trips (population). In the presence of systematic bias, any CV-based approach is inappropriate. Further, the bias may be variable across seasons, spatial fishing locations and utilized fishing gears as vessels attempt to reduce their leasing costs and, potentially, exceed their catch allocations by failing to account for true catch.

To ensure that all sectors are accountable to their annual allocations, that catch rights flow via leasing to those able to fish most profitably conditioned on the constraints provided by catch accounting, and to ensure that total catch does not exceed legal limits, various monitoring methods are considered in this action.

This action specifies a method for setting observer coverage levels in the presence of such biased sampling. Primarily, it proposes flat-rate coverage levels at 25% increments. It also considers electronic technology-based alternatives to human at-sea monitors, and cost-saving exemptions for fishing trips that occur in places where groundfish are less likely to be encountered.

#### **1.4 Description of the Proposed Action**

The potential solutions considered in this action focus on measures that adjust the current monitoring program to improve accounting and accuracy of collected catch data. Catch accounting and reporting requirements are to be fair and equitable for all commercial groundfish fishermen, while maximizing the value of collected catch data and minimizing costs for the fishing industry and the National Marine Fisheries Service.

Briefly, the Agency proposes the following actions affecting business entities regulated under the Northeast Multispecies Fishery Management Plan:

- Commercial Groundfish Monitoring Program Revisions (Sectors Only). Sets the standard at a fixed total at-sea target monitoring (ASM) target coverage level, based on a percentage of trips, at 100 percent coverage, with federal funds reimbursing industry costs, and in the



absence of federal funding sufficient to reimburse a minimum of 40 percent coverage of all trips, the industry will fund the additional coverage needed to achieve 40 percent (combined A-Sea Monitoring (ASM) or Northeast Fisheries Observer Program (NEFOP)) coverage target. Allows additional sector monitoring tools, in addition to human ASM, including the audit model with electronic monitoring (EM) and maximized retention with EM combined with dockside monitoring (DSM). Sets a time certain for knowing the total monitoring coverage level each year. Establishes a review process to evaluate the monitoring coverage rate. Allows for additional monitoring tools, vessel specific coverage levels, and all alternatives in Amendment 23 to be considered through a future framework adjustment.

- Commercial Groundfish Monitoring Program Revisions (Sectors and Common Pool). No action would maintain the status quo, no mandatory dockside monitoring program for sectors and the common pool.
- Sector Reporting. Grants the Regional Administrator the authority to streamline sector reporting requirements.
- Funding/Operation Provisions of Groundfish Monitoring (Sectors and Common Pool). Allows for higher coverage levels up to 100 percent if NMFS determines it has available funding for additional administrative costs to NMFS and sampling costs to industry in a given year. Allows for waivers from monitoring requirements for sectors and common pool under certain conditions.
- Management Uncertainty Buffers for the Commercial Groundfish Fishery (Sectors Only). Eliminates the management uncertainty buffer for sector sub-ACLs (allocated stocks only) with 100% monitoring of all sector trips.
- Remove Commercial Groundfish Monitoring Requirements for Certain Vessel Under Certain Conditions. Removes monitoring program requirement for vessels fishing exclusively west of 71 degrees 30 minutes west longitude from additional monitoring coverage requirements. Establishes a review process for vessel to be removed from commercial groundfish monitoring program requirements.

## **1.5 Description of the Alternatives**

The Alternatives Under Consideration in the accompanying EIS are included in Section 4.0 of this document. Alternatives considered in this action present a range of Commercial Groundfish Monitoring Revisions, including At-Sea Monitoring coverage levels of 25, 50, 75 and 100%; coverage levels defined by the percent of trips monitored or the percent of catch monitored, options for allowing Electronic Monitoring in place of human observers, exemptions from monitoring requirements under certain conditions and the removal, or not, of the management uncertainty buffers when monitoring coverage is at 100%.

The Alternatives proposed in the EIS replace the existing annual coverage determination process with a fixed coverage rate for several years, balancing the need for improved catch accounting with increases in industry costs assuming industry will pay for such monitoring. The primary difference between the various Alternatives under consideration and the proposed action is that, under the proposed action, monitoring coverage levels are fixed for four years at 100%, subject to available federal funding, and fall to 40% in year five. Year five coverage rates are subject to revision based on a required subsequent review using data generated under full coverage. Additional alternatives such as not removing the management uncertainty buffers even under 100% coverage and not exempting certain fishing trips with presumably low groundfish catch are also addressed.

Alternatives Considered but Rejected are included in Section 5.0 and are not summarized here.

## 1.6 Baseline Conditions

Baseline conditions are those of fishing year 2018, as described in detail in Section 7.5.1.4.2.1 of the accompanying EIS. In this year observer coverage levels were set at a target of 15% with a 14.6% realized coverage fishery-wide<sup>1</sup>. In FY 2018, as in all subsequent years, the fishing industry bore no direct cost for catch monitoring.

The following tables summarize baseline conditions for this analysis.

Cat	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)
<=5	0.2	0	0.1	0.1	71
>5, <=20	1.9	0	0.5	1.3	72
>20, <=50	7.8	0	2.3	5.6	71
>50, <=80	6.3	0	2.2	4.1	65
>80, <=160	27.7	0	7.5	20.3	73
>160	27.0	0	7.0	19.9	74
<i>TOTAL</i>	<i>70.9</i>	<i>0</i>	<i>19.6</i>	<i>51.3</i>	<i>70</i>

**Table 1: Estimated dynamic impacts of monitoring under the Base case, aggregate fleet totals by days absent category (2018\$, mil)**

Home Port	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)
CT PORTS	0.2	0	0.0	0.1	75

<sup>1</sup> Summary of Analyses Conducted to Determine At-Sea Monitoring Requirements for Multispecies Sectors FY2020, available at: [https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/Sectors/ASM/FY2020\\_Multispecies\\_Sector\\_ASM\\_Requirements\\_Summary.pdf](https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/Sectors/ASM/FY2020_Multispecies_Sector_ASM_Requirements_Summary.pdf)

Home Port	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)
OTHER MA PORTS	5.7	0	1.9	3.9	67
BOSTON	16.4	0	4.6	11.8	72
CHATHAM	4.7	0	0.8	4.0	83
GLOUCESTER	16.5	0	4.5	12.0	73
NEW BEDFORD	11.4	0	3.5	7.9	70
OTHER ME PORTS	2.1	0	0.7	1.4	67
PORTLAND	5.5	0	1.6	4.0	72
NH PORTS	2.2	0	0.7	1.5	69
NY PORTS	0.5	0	0.1	0.5	89
OTHER RI PORTS	0.4	0	0.2	0.3	62
POINT JUDITH	2.4	0	0.6	1.8	74
OTHER NORTHEAST PORTS	999.0	999	999.0	999.0	999

**Table 2: Estimated dynamic impacts of monitoring under the Base case, aggregate fleet totals by vessel home port (2018\$, mil)**

Size Class	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)
30'to<50'	15	0	3.7	11	75
50'to<75'	23	0	6.0	17	74
75'+	33	0	9.9	23	70

**Table 3: Estimated dynamic impacts of monitoring under the Base case, aggregate fleet totals by vessel size class (2018\$, mil)**

Sector	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)
Sustainable Harvest Sector	24.7	0	6.9	17.8	72
Northeast Fishery Sector II	14.5	0	3.8	10.7	74
Northeast Fishery Sector VI	5.5	0	1.5	4.0	72
Northeast Fishery Sector XIII	5.3	0	1.9	3.5	65
Northeast Fishery Sector VIII	5.1	0	1.5	3.6	71
Georges Bank Cod Fixed Gear Sector	4.8	0	0.8	4.0	84
Maine Coast Community Sector	2.6	0	0.7	1.9	72
Northeast Fishery Sector XI	2.1	0	0.7	1.5	70

Sector	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)
Sustainable Harvest Sector - Inshore	1.9	0	0.8	1.2	61
Northeast Fishery Sector V	1.8	0	0.4	1.4	79
Northeast Fishery Sector XII	1.3	0	0.4	1.0	73
Northeast Coastal Communities Sector	999.0	999	999.0	999.0	999
Northeast Fishery Sector III	0.5	0	0.2	0.3	64
Northeast Fishery Sector X	0.1	0	0.0	0.1	66
Northeast Fishery Sector VII	999.0	999	999.0	999.0	999

**Table 4: Estimated dynamic impacts of monitoring under the Base case, aggregate fleet totals by sector (2018\$, mil)**

Beginning in FY2020 coverage targets were no longer determined by the previous “CV” standard and were instead set at a flat target of 40% for both FY 2020 and 2021<sup>2</sup>, representing a change from these baseline conditions in that here the percentage of trips for which there is no independent accounting of landings and discards is increased. Monitoring continues to be federally funded.

### 1.7 Short-run Aggregate and Distributional Economic Impacts of the Proposed Action

Executive Order 12866 mandates that proposed measures be analyzed in terms of: (1) changes in net benefits and costs to stakeholders, (2) changes to the distribution of benefits and costs within the industry, (3) changes in income and employment, (4) cumulative impacts of the regulation, and (5) changes in other social concerns.

The effects of the proposed action depend, essentially, upon the degree of federal subsidy offered to the commercial groundfish fishery and the number of vessels anticipated to utilize electronic monitoring as a replacement for human at-sea monitors. Electronic monitoring is predicted to be more cost-effective, particularly for the subset of most-active vessels in the groundfish fishery (those fishing more than 30-50 days per year).

Section 6.6.10.3 states that sufficient government funding for 100% coverage is budgeted through the end of fishing year 2022. Subsequently, NMFS has indicated it anticipates funding sufficient to fund monitoring costs through the end of fishing year 2023. If monitoring costs are 100% subsidized and monitoring coverage is provided on 100% of trips, the fishery overall is predicted to generate ~\$4 mil in additional revenues, due mostly to the removal of the management uncertainty buffers. These additional revenues are predicted to increase profits by approximately \$2.8 mil, taking into account the fact that the industry will not be paying for monitoring. If no vessels utilize electronic monitoring as a replacement for human at-sea monitors, the fishery is predicted to generate only \$1.4 mil in additional profits on \$1.5 mil in additional revenues.

This action proposes a monitoring coverage level “floor” of 40%, which applies in the fifth year after implementation of this action, conditional on a required review of fishery performance, or earlier if no subsidy is available and industry is required to pay for 100% of its monitoring costs.

<sup>2</sup> Letters dated January 28, 2020 and January 25, 2021 from GARFO Regional Administrator to NEFMC, available at <https://www.greateratlantic.fisheries.noaa.gov>

Here, as at all coverage levels less than 100%, the management uncertainty buffers are not removed. In this instance, the fleet is predicted to generate between \$1.5-2.0 mil less profit than under the status quo, or about a 4% reduction.

The analyses developed in support of this action assume that fishing industry will bear some or all of the costs associated with monitoring. As this will not be the case for the foreseeable future, these analyses were re-run here with no industry costs associated with monitoring.

#### Years 1-4, 100% monitoring with approved EM options and removal of uncertainty buffers

The proposed action sets the target monitoring coverage at 100% for four years if full federal funding is available. Under this scenario, all industry monitoring costs are \$0. Fishery revenues are estimated to be \$4 mil higher than under the Base case. Operating profits increase by \$2.8 mil. Vessels fishing 50-80 days per year, and those fishing more than 160 days per year, are predicted to see the largest increase in profitability. Vessels larger than 50 feet, and those fishing out of New Bedford and Boston, MA, are predicted to see the largest profitability increases. No subsets of the fishing fleet are predicted to see profits decline under this scenario.

Subsidy	Cat	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)	Rel to Base (%)
FULL	<=5	0.2	0	0.1	0.1	70	0.0
	>5, <=20	1.8	0	0.5	1.3	72	0.0
	>20, <=50	8.2	0	2.3	5.8	71	3.6
	>50, <=80	6.7	0	2.3	4.4	65	7.3
	>80, <=160	28.9	0	7.7	21.1	73	3.9
	>160	29.1	0	7.7	21.4	74	7.5
	<i>TOTAL</i>	<i>74.9</i>	<i>0</i>	<i>20.6</i>	<i>54.1</i>	<i>72</i>	<i>6.1</i>

**Table 5: Estimated dynamic impacts of blended ASM and EM with 100% coverage with management uncertainty buffers removed, aggregate fleet totals by days absent category (2018\$, mil, costs based on 3 year average for EM)**

Subsidy	Home Port	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)	Rel to Base (%)
FULL	CT PORTS	0.2	0	0.1	0.2	75	100.0
	OTHER MA PORTS	5.9	0	1.9	4.0	67	2.6
	BOSTON	17.7	0	4.9	12.8	72	8.5
	CHATHAM	4.8	0	0.8	4.0	83	0.0
	GLOUCESTER	17.1	0	4.6	12.5	73	4.2
	NEW BEDFORD	12.4	0	3.9	8.6	69	8.9

Subsidy	Home Port	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)	Rel to Base (%)
	OTHER ME PORTS	2.2	0	0.7	1.5	68	7.1
	PORTLAND	5.8	0	1.6	4.2	72	5.0
	NH PORTS	2.3	0	0.7	1.6	69	6.7
	NY PORTS	0.6	0	0.1	0.5	89	0.0
	OTHER RI PORTS	0.5	0	0.2	0.3	63	0.0
	POINT JUDITH	2.4	0	0.6	1.8	74	0.0
	OTHER NORTHEAST PORTS	0.0	0	0.0	0.0	999	-100.0

**Table 6: Estimated dynamic impacts of monitoring under blended ASM and EM with 100% coverage with management uncertainty buffers removed, aggregate fleet totals by vessel home port (2018\$, mil, costs based on 3 year average for EM)**

Subsidy	Size Class	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)	Rel to Base (%)
	30'to<50'	15	0	3.8	11	75	1.8
FULL	50'to<75'	25	0	6.3	19	75	6.9
	75'+	35	0	10.5	24	70	6.1

**Table 7: Estimated dynamic impacts of monitoring under blended ASM and EM with 100% coverage with management uncertainty buffers removed, aggregate fleet totals by vessel size class (2018\$, mil, costs based on 3 year average for EM)**

Subsidy	Sector	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)	Rel to Base (%)
	Sustainable Harvest Sector	26.0	0	7.2	18.8	72	5.6
	Northeast Fishery Sector II	15.2	0	3.9	11.2	74	4.7
	Northeast Fishery Sector VI	6.0	0	1.6	4.3	73	7.5
	Northeast Fishery Sector XIII	5.8	0	2.1	3.8	65	8.6
	Northeast Fishery Sector VIII	5.4	0	1.6	3.9	71	8.3
FULL	Georges Bank Cod Fixed Gear Sector	4.8	0	0.8	4.0	84	0.0
	Maine Coast Community Sector	2.8	0	0.8	2.0	73	5.3
	Northeast Fishery Sector XI	2.3	0	0.7	1.6	70	6.7
	Sustainable Harvest Sector - Inshore	2.1	0	0.8	1.3	62	8.3

Subsidy	Sector	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)	Rel to Base (%)
	Northeast Fishery Sector V	1.8	0	0.4	1.4	79	0.0
	Northeast Fishery Sector XII	1.4	0	0.4	1.0	73	0.0
	Northeast Coastal Communities Sector	999	0	0.0	0.0	999	999
	Northeast Fishery Sector III	0.5	0	0.2	0.3	64	0.0
	Northeast Fishery Sector X	0.1	0	0.0	0.1	66	0.0
	Northeast Fishery Sector VII	999	0	0.0	0.0	999	999

**Table 8: Estimated dynamic impacts of monitoring under blended ASM and EM with 100% coverage with management uncertainty buffers removed, aggregate fleet totals by sector (2018\$, mil, costs based on 3 year average for EM)**

Year 5 (or sooner) with 40% monitoring with approved EM options and uncertainty buffers included

At a 40% target coverage, fleet-wide monitoring costs are estimated to be between \$1 and \$2.1 mil. The dynamically-estimated median ASM cost for 40% coverage without removing the management uncertainty buffers is \$1.5 mil. Fishery revenues are estimated to be higher, generating \$71.3 mil and representing an additional \$0.4 mil relative to the Base case. Operating profits are estimated at \$49.9 mil, or \$1.4 mil lower than the Base case under this scenario.

Smaller vessels, those under 50ft, as well as vessels fishing less than 50 days per year are predicted to see the largest declines in profitability, on the order of 6-15% reductions. Chatham, Point Judith and ports in New Hampshire are all predicted to see profitability decline by more than 5%.

Cat	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)	Rel to Base (%)
<=5	0.2	0.0	0.1	0.1	55	0.0
>5, <=20	1.7	0.1	0.5	1.1	66	-15.4
>20, <=50	7.8	0.3	2.2	5.2	67	-7.1
>50, <=80	6.4	0.2	2.2	4.0	63	-2.4
>80, <=160	27.4	0.5	7.4	19.5	71	-3.9
>160	27.8	0.4	7.3	20.0	72	0.5
<i>TOTAL</i>	<i>71.3</i>	<i>1.5</i>	<i>19.7</i>	<i>49.9</i>	<i>70</i>	<i>-2.2</i>

**Table 9: Estimated dynamic impacts of monitoring under 40% coverage, aggregate fleet totals by days absent category (2018\$, mil)**

Home Port	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)	Rel to Base (%)
CT PORTS	0.2	0.0	0.0	0.1	75	0.0
OTHER MA PORTS	5.7	0.1	1.8	3.7	65	-5.1
BOSTON	16.9	0.3	4.7	11.8	70	0.0
CHATHAM	4.6	0.1	0.8	3.7	81	-7.5
GLOUCESTER	16.3	0.3	4.4	11.6	71	-3.3
NEW BEDFORD	11.8	0.2	3.7	7.9	67	0.0
OTHER ME PORTS	2.1	0.1	0.7	1.4	64	0.0
PORTLAND	5.5	0.1	1.5	3.9	70	-2.5
NH PORTS	2.2	0.1	0.7	1.4	65	-6.7
NY PORTS	0.5	0.0	0.1	0.5	85	0.0
OTHER RI PORTS	0.4	0.0	0.2	0.3	59	0.0
POINT JUDITH	2.3	0.1	0.6	1.6	70	-11.1
OTHER NORTHEAST PORTS	0.0	0.0	0.0	0.0	999	-100.0

**Table 10: Estimated dynamic impacts of monitoring under 40% coverage, aggregate fleet totals by vessel home port (2018\$, mil)**

Size Class	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)	Rel to Base (%)
30'to<50'	14	0.5	3.6	10	71	-7.3
50'to<75'	24	0.5	6.0	17	73	-1.1
75'+	33	0.6	10.0	23	68	-1.3

**Table 11: Estimated dynamic impacts of monitoring under 40% coverage, aggregate fleet totals by vessel size class (2018\$, mil)**

Sector	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)	Rel to Base (%)
Sustainable Harvest Sector	24.8	0.4	6.9	17.5	71	-1.7
Northeast Fishery Sector II	14.4	0.2	3.8	10.4	72	-2.8
Northeast Fishery Sector VI	5.7	0.1	1.6	4.0	70	0.0
Northeast Fishery Sector XIII	5.6	0.1	2.0	3.5	62	0.0
Northeast Fishery Sector VIII	5.2	0.1	1.5	3.6	69	0.0
Georges Bank Cod Fixed Gear Sector	4.6	0.1	0.7	3.7	81	-7.5
Maine Coast Community Sector	2.7	0.1	0.7	1.9	70	0.0
Northeast Fishery Sector XI	2.2	0.1	0.7	1.4	65	-6.7



Sector	Gross Rev	ASM Cost	Cost of Ops	Operational Profit	Profit (%)	Rel to Base (%)
Sustainable Harvest Sector - Inshore	2.0	0.1	0.8	1.2	59	0.0
Northeast Fishery Sector V	1.7	0.1	0.4	1.3	75	-7.1
Northeast Fishery Sector XII	1.3	0.0	0.4	0.9	70	-10.0
Northeast Coastal Communities Sector	999	999	999	999	999	999
Northeast Fishery Sector III	0.5	0.0	0.2	0.3	59	0.0
Northeast Fishery Sector X	0.1	0.0	0.0	0.1	52	0.0
Northeast Fishery Sector VII	999	999	999	999	999	999

**Table 12: Estimated dynamic impacts of monitoring under 40% coverage, aggregate fleet totals by sector (2018\$, mil)**

#### Static monitoring costs associated with industry-funded 40% monitoring coverage

The following tables show the predicted costs associated with industry funded monitoring at 40% coverage. This level is a fishery-wide floor, ensuring that catch is accurately accounted on at least 40% of trips and is expected to occur only in Year 5. It may occur at any point, however, if there is insufficient federal funding available to cover the costs of monitoring. The reversion in Year 5 from 100% to 40% monitoring is also subject to change based upon a formal review of the monitoring program beginning in Year 3; on the basis of this review, coverage targets may be set higher or lower in subsequent years.

Industry-funded monitoring will be most expensive for larger vessels making longer trips and participating more intensely in the groundfish fishery.

Cat	Fleet Low	Fleet High	Vessel Low	Vessel High	Trip Low	Trip High	Day Low	Day High
<=5	16	50	0.69	2.07	0.18	0.55	0.21	0.59
>5, <=20	85	126	2.83	4.21	0.16	0.24	0.17	0.25
>20, <=50	177	399	3.78	8.48	0.09	0.2	0.08	0.17
>50, <=80	84	191	6.03	13.63	0.08	0.19	0.05	0.13
>80, <=160	340	710	8.96	18.67	0.22	0.47	0.09	0.18
>160	297	635	14.86	31.75	0.39	0.84	0.09	0.19
TOTAL	1,0	2,11	-	-	-	-	-	-

**Table 13: Estimated static costs of monitoring under 40% coverage, by days absent category (2018\$, thousands. Low and high estimates are mean +/- one standard deviation)**

Home Port	Fleet Low	Fleet High	Vessel Low	Vessel High	Trip Low	Trip High	Day Low	Day High
OTHER MA PORTS	95.1	183.7	4.53	8.75	0.17	0.33	0.1	0.2

Home Port	Fleet Low	Fleet High	Vessel Low	Vessel High	Trip Low	Trip High	Day Low	Day High
BOSTON	230.7	470.5	10.03	20.46	0.36	0.74	0.08	0.18
CHATHAM	85	138.9	3.86	6.32	0.1	0.16	0.14	0.22
GLOUCESTER	185.1	440.3	5.44	12.95	0.12	0.3	0.07	0.16
NEW BEDFORD	117.5	284.6	9.04	21.89	0.37	0.9	0.07	0.18
OTHER ME PORTS	45.7	90.1	3.52	6.93	0.1	0.19	0.08	0.16
PORTLAND	85.8	147.9	9.53	16.43	0.59	1.01	0.12	0.21
NH PORTS	59	137.1	4.91	11.42	0.1	0.23	0.07	0.17
NY PORTS	16.7	31.5	3.34	6.3	0.09	0.16	0.1	0.19
OTHER RI PORTS	9.2	24.4	3.07	8.14	0.58	1.53	0.13	0.43
POINT JUDITH	44.3	114.5	2.6	6.73	0.07	0.18	0.07	0.17
OTHER NORTHEAST PORTS	999	999	999	999	999	999	999	999

**Table 14: Estimated static costs of monitoring under 40% coverage, by vessel home port (2018\$, thousands. Low and high estimates are mean +/- one standard deviation)**

Size Class	Fleet Low	Fleet High	Vessel Low	Vessel High	Trip Low	Trip High	Day Low	Day High
30'to<50'	336	643	3.7	7.1	0.10	0.18	0.09	0.18
50'to<75'	316	731	5.9	13.5	0.18	0.42	0.08	0.19
75'+	349	736	12.5	26.3	0.50	1.05	0.08	0.19

**Table 15: Estimated static costs of monitoring under 40% coverage, by vessel size class (2018\$, thousands. Low and high estimates are mean +/- one standard deviation)**

Sector	Fleet Low	Fleet High	Vessel Low	Vessel High	Trip Low	Trip High	Day Low	Day High
Sustainable Harvest Sector	306.9	579.2	12.79	24.13	0.53	1	0.1	0.2
Northeast Fishery Sector II	139.6	356.5	5.58	14.26	0.11	0.27	0.06	0.15
Northeast Fishery Sector XIII	74.2	197.5	4.95	13.17	0.3	0.8	0.09	0.23
Northeast Fishery Sector VI	94.5	190.8	13.51	27.25	0.66	1.33	0.11	0.22
Georges Bank Cod Fixed Gear Sector	82.2	133.1	4.11	6.66	0.1	0.17	0.14	0.23
Northeast Fishery Sector XI	51	132.7	4.63	12.06	0.09	0.23	0.06	0.17
Northeast Fishery Sector VIII	51	129.4	6.38	16.18	0.3	0.75	0.07	0.18
Northeast Fishery Sector V	41	94.4	2.73	6.29	0.06	0.14	0.07	0.16
Maine Coast Community Sector	56.6	92.9	3.78	6.19	0.17	0.27	0.12	0.19
Sustainable Harvest Sector - Inshore	38.5	78	4.81	9.75	0.15	0.3	0.08	0.19
Northeast Fishery Sector XII	17.5	49.6	2.5	7.09	0.04	0.13	0.05	0.14

Sector	Fleet Low	Fleet High	Vessel Low	Vessel High	Trip Low	Trip High	Day Low	Day High
Northeast Fishery Sector III	20.5	30.2	2.57	3.77	0.12	0.18	0.15	0.22
Northeast Coastal Communities Sector	999	999	999	999	999	999	999	999
Northeast Fishery Sector X	13.9	20.3	1.99	2.9	0.18	0.26	0.21	0.31
Northeast Fishery Sector VII	999	999	999	999	999	999	999	999

**Table 16: Estimated static costs of monitoring under 40% coverage, by sector (2018\$, thousands. Low and high estimates are mean +/- one standard deviation)**

#### **Monitoring Costs reimbursed by NMFS under 100% monitoring**

Under the proposed action, NMFS is expected to reimburse the industry for all monitoring costs. While these costs are not borne directly by fishing businesses, the reimbursement mechanism represents a subsidy, and a change in the distribution of costs from industry to taxpayers.

Amendment 16 to the Multispecies FMP envisioned a shift from subsidized monitoring to industry-based funding after two years, intended for implementation in fishing year 2012. That shift never materialized, and NMFS has received funding to pay for monitoring in all years except 2016, when 15% of monitoring costs were funded by industry. The following table shows the magnitude of these costs across the past five years.

Fishing Year	Federal reimbursement spending (mil, 2018\$)	Coverage rate, ASM achieved	Coverage rate, NEFOP Achieved	Achieved combined coverage	Target combined coverage	Proportion of ASM costs federally reimbursed
2016	\$0.73	10%	5%	14%	14%	85%
2017	\$0.49	5%	11%	16%	16%	100%
2018	\$0.60	8%	7%	14%	15%	100%
2019	\$1.05	14%	9%	23%	31%	100%
2020	\$0.67	9%	3%	12%	40%	100%

**Table 17: Summary of costs and coverage rates, 2016-2020.**

The proposed action is anticipated to take effect in Fishing Year 2022. The following table summarized a range of costs anticipated to be reimbursed by the Agency (the magnitude of the federal subsidy). These costs are highly uncertain, and will vary based on the number of vessels that opt in to the two electronic monitoring programs noted in the alternatives. Because costs are not a driver for monitoring technology selection at the vessel level, and because we have no data on individual owner or captain preferences for such technologies, there is a wide range of potential costs.

These are “industry-equivalent” costs for operational components of at sea monitoring. The approach used to generate estimates in the Amendment 23 DEIS is used here, with the following modifications:

- ASM per sea-day rates will be slightly higher than those estimated in the DEIS due to anticipated difficulties stepping up human observer capacity;
- EM review rates are estimated at 50% for both the audit and max retention models in both 2021 and 2022;
- all vessels currently enrolled in an existing EM model will continue in that program;
- NEFOP coverage is subtracted from ASM (human) estimates, assuming 9% of trips in both 2021 and 2022 will be covered under NEFOP.

These are “static” costs, which assume no second-order monitoring effects. Because sectors and vessels are not directly paying the cost of monitoring, the additional monitoring is not expected to change operating costs for fishing trips and should not induce vessels to change their behavior.

Fishing Year	Monitoring Technology	# VsIs enrolled – LOW	# VsIs enrolled – HIGH	Component Cost – LOW	Component Cost – HIGH	TOTAL COST – LOW	TOTAL COST – HIGH
2021	EM-Audit	41	18	\$0.61	\$0.20		
	EM-MaxRet	9	2	\$0.21	\$0.05	\$2.2	\$2.4
	ASM	118	148	\$1.38	\$2.09		
2022	EM-Audit	99	18	\$2.06	\$0.20		
	EM-MaxRet	23	2	\$0.63	\$0.05	\$3.3	\$6.1
	ASM	46	148	\$0.56	\$5.82		

**Table 18: Estimated low and high federal reimbursement of operational monitoring costs for Fishing Years 2021 and 2022 (2018\$, mil). Coverage target is 40% in 2021 and 100% in 2022. Vessels currently enrolled in EM programs are assumed to remain enrolled across all permutations.**

#### Impacts of other measures included in the Proposed Action

In all cases, vessels that opt to make fishing trips entirely west of 071° 30'W are exempt from the additional human-based (ASM) monitoring requirements. This may increase profits if the coverage level floor is implemented due to lack of federal subsidies for monitoring costs. Likewise, in the case where coverage levels are set higher than 40%, vessels opting to utilize this

exemption will reduce monitoring costs covered via federal subsidies, allowing more funding to cover monitoring for a longer duration or at a higher level.

### **1.8 Impacts of Significant Alternatives**

The economic impacts of all alternatives are analyzed extensively in Section 7.5 of the accompanying EIS. All Alternatives assume some portion of monitoring costs will be funded by industry participants, resulting, in all cases, in reduced industry profitability relative to the Proposed Action and baseline conditions. Alternatives where less than 100% monitoring is required do not allow the management uncertainty buffers to be removed, leading to lower overall annual catch allocations and revenue declines on the order of \$2-5 mil. Alternatives requiring industry to pay for monitoring reduce profits by a similar amount. There are no alternatives considered here that increase profits relative to the proposed action.

### **1.9 Monetizing Benefits and Discounting Future Revenues**

The benefits of improved monitoring cannot be monetized. There are too many dimensions to the problem of unaccounted catch, and they propagate through too many channels to produce reliable estimates of either (a) increased future fishery allocations and long-term sustainable yields, or (b) efficient distribution of fishing rights through improved quota lease market function.

When landings or discards, both of which have monetary value, are not reported and properly accounted, the data underlying stock assessments are compromised. This creates short and long-run perturbations in estimates of biomass and sustainable yield. These perturbations generate uncertainty in estimates and imprecision in annual catch allocations (quotas, “sub-ACL’s”). Sometimes the assessments generate estimates that are so imprecise as to fail to pass peer review, and remedial methods for determining stock sizes and allocations are required. If assessment quality degrades too far, stock status becomes indeterminable. This has happened on several occasions in the previous ten years, situations which lead directly to the need for this action. It is not possible, however, to determine monetized costs associated with such circumstances, nor is it possible to determine a path towards future increases in allocations in catch resulting from improved assessment accuracy.

The ability for sectors and fisherman to lease quota (ACE, derived from ACL’s) allows catch rights to flow to those most able to profitably fish under prevailing allocations while allowing those with insufficient allocations to profit, by leasing quota, while not actively fishing. If landings and discards are inaccurately accounted, or unaccounted altogether, inefficient operators may chose to continue fishing while not reporting portions of their catch. This leads to an inefficient distribution of catch rights among fishery participants. The direct economic effects of this cannot be estimated or monetized.

Quotas in this fishery are set annually based upon updates to stock assessments and other data. These quotas drive the economic performance of this fishery. Absent information on future quota allocation changes, it is not possible to estimate future fishery performance on the basis of the changes proposed in this action alone. While the proposed action envisions 100% federally-funded monitoring through year 4 of this action, funds allocated to date are anticipated to provide such coverage only through year 2 and, after that, the actual coverage rate and removal status for the management uncertainty buffers, which would reduce allocations and lower revenues and profits,

is uncertain. Forecast revenues, costs and profits, as well as Net Present Value estimates, are therefore not provided.

### **1.10 Models, Assumptions And Uncertainties**

All models used to develop these analyses, and their assumptions and associated uncertainties, are described in detail in Section 7.5.1 of the accompanying EIS.

### **1.11 Determination of Significance Under Executive Order 12866**

The proposed action does not constitute a significant regulatory action under EO 12866. It will not have an annual effect on the economy of more than \$100 million, as the fishery in its entirety generates only ~\$70-75 mil annually and the proposed action is predicted to increase fishery-wide net returns by ~\$4-5 mil if monitoring is fully subsidized at a 100% coverage level with the management uncertainty buffers removed, as targeted for Years 1-4 of this action. In year 5, and in any years prior to this where federal funding for monitoring is not available, net returns are predicted to be reduced by ~\$1-2 mil due to increased costs from industry-funded monitoring at a 40% coverage level with the management uncertainty buffers remaining in place.

Transfers, primarily via ACE leasing between sectors, are not expected to change dramatically under this action. It is not predicted to have any adverse impact on ports, fish dealers, recreational anglers, and operators of party/charter businesses. In years 1-4, both revenues and profits are predicted to increase so long as federal funds are available to pay for monitoring costs.

In addition, there should be no interactions with activities of other agencies and no impacts on entitlements, grants, user fees, or loan programs. No novel legal or policy issues are raised. The Proposed Action is not considered significant as defined by EO 12866.

## **2. INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS**

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 600-611, was designed to place the burden on the government to review all new regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization can have a bearing on its ability to comply with Federal regulations. Major goals of the RFA are: 1) to increase agency awareness and understanding of the impact of their regulations on small business; 2) to require that agencies communicate and explain their findings to the public; and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, (1) certify that the action will not have a significant adverse impact on a substantial number of small entities, and support such a certification declaration with a factual basis, demonstrating this outcome, or, (2) if such a certification cannot be supported by a factual basis, prepare and

make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

The sections below provide the supporting analysis to assess whether the proposed regulations will have a “significant impact on a substantial number of small entities.”

## **2.1 Basis and Purpose of the Rule**

This action is taken under the authority of the MSA and regulations at 50 CFR part 648.

A complete description of the purpose and need and objectives of this proposed rule is found in Section 1.

The primary purpose of this action is to improve accounting of landings and discards in the commercial groundfish fishery, while also taking in to account the costs of such monitoring. Catch of commercial groundfish in the sector component of the fishery is managed via a quota system, where pounds of each groundfish species are allocated annually to sectors (essentially cooperatives) and all fish caught, including discards, must be accounted against these shares of quota. Quota shares (pounds) are “leased” (traded) between Sectors, with each Sector agreeing to a lease price prior to executing the trade. Catch that is discarded or landed without accounting will save Sectors and the businesses that comprise those Sectors the value of the leased quota pounds. To ensure that all Sectors are accountable to their annual allocations, various monitoring methods are considered.

## **2.2 Description of Regulated Entities**

This action regulates all commercial fishing businesses with a limited access permit allowing vessels to participate in the large mesh Northeast Multispecies (groundfish) fishery. As of June 1, 2020, NMFS had issued 828 commercial limited-access groundfish permits associated with vessels. Therefore, 828 permits are regulated by this action. Each vessel may be individually owned or part of a larger corporate ownership structure, and for RFA purposes, it is the ownership entity that is ultimately regulated by the proposed action. Ownership entities are identified on June 1st of each year based on the list of all permit numbers, for the most recent complete calendar year, that have applied for any type of Northeast Federal fishing permit. The current ownership data set is based on calendar year 2019 permits and contains gross sales associated with those permits for calendar years 2017 through 2019.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR § 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on the average annual revenue for the three years from 2017 through 2019.

## **2.3 Number of Regulated Commercial Fishing Entities**

Ownership data collected from permit holders indicates that there are **667 distinct business entities** that hold at least one permit regulated by the proposed action. Of these, all are engaged primarily in commercial fishing, and 80 did not have revenues (were inactive in 2019). **661 are**

**categorized as small entities and 6 are categorized as large entities**, per the NMFS guidelines. Ownership data collected from dealer permit holders indicates there are 148 distinct business entities that hold at least one dealer permit regulated by this action. Of these, **135 distinct businesses are categorized as small entities and 13 are categorized as large entities**, per the NMFS guidelines.

## **2.4 Summary of the Proposed Action and Significant Alternatives**

Briefly, the Agency proposes the following actions affecting business entities regulated under the Northeast Multispecies Fishery Management Plan:

1. Commercial Groundfish Monitoring Program Revisions (Sectors Only). Sets the standard at a fixed total at-sea target monitoring (ASM) target coverage level, based on a percentage of trips, at 100 percent coverage, with federal funds reimbursing industry costs, and in the absence of federal funding sufficient to reimburse a minimum of 40 percent coverage of all trips, the industry will fund the additional coverage needed to achieve 40 percent (combined A-Sea Monitoring (ASM) or Northeast Fisheries Observer Program (NEFOP)) coverage target. Allows additional sector monitoring tools, in addition to human ASM, including the audit model with electronic monitoring (EM) and maximized retention with EM combined with dockside monitoring (DSM). Sets a time certain for knowing the total monitoring coverage level each year. Establishes a review process to evaluate the monitoring coverage rate. Allows for additional monitoring tools, vessel specific coverage levels, and all alternatives in Amendment 23 to be considered through a future framework adjustment.
2. Commercial Groundfish Monitoring Program Revisions (Sectors and Common Pool). No action would maintain the status quo, no mandatory dockside monitoring program for sectors and the common pool.
3. Sector Reporting. Grants the Regional Administrator the authority to streamline sector reporting requirements.
4. Funding/Operation Provisions of Groundfish Monitoring (Sectors and Common Pool). Allows for higher coverage levels up to 100 percent if NMFS determines it has available funding for additional administrative costs to NMFS and sampling costs to industry in a given year. Allows for waivers from monitoring requirements for sectors and common pool under certain conditions.
5. Management Uncertainty Buffers for the Commercial Groundfish Fishery (Sectors Only). Eliminates the management uncertainty buffer for sector sub-ACLs (allocated stocks only) with 100% monitoring of all sector trips.
6. Remove Commercial Groundfish Monitoring Requirements for Certain Vessel Under Certain Conditions. Removes monitoring program requirement for vessels fishing exclusively west of 71 degrees 30 minutes west longitude from at-sea and dockside



monitoring coverage requirements. Establishes a review process for vessel to be removed from commercial groundfish monitoring program requirements.

The Alternatives Under Consideration in the accompanying EIS are included in Section 4.0 of the EIS. Alternatives considered in this action present a range of Commercial Groundfish Monitoring Revisions, including At-Sea Monitoring coverage levels of 25, 50, 75 and 100%; coverage levels defined by the percent of trips monitored or the percent of catch monitored, options for allowing Electronic Monitoring in place of human observers, exemptions from monitoring requirements under certain conditions and the removal, or not, of the management uncertainty buffers when monitoring coverage is at 100%. Alternatives Considered but Rejected are included in Section 5.0 and are not summarized here.

## **2.5 Description and estimate of economic impacts on regulated entities, by entity size and industry**

The impacts of all alternatives on human communities, including all fishing businesses regulated by this action, are detailed in Section 6.0 of the accompanying DEIS.

The proposed action has the potential to affect 661 small and 6 large fishing business entities. Of these, 80 entities did not participate in any commercial fisheries in the most recent year (2019). Approximately 268 individual vessels actively participated in the commercial groundfish fishery by catching and landing fish for profit. These 268 vessels constitute 243 regulated business entities, of which 1 is large and 242 are small.

This action affects primarily the sector portion of the commercial groundfish fishery. Of the 268 individual vessels noted in the above paragraph, 188 were enrolled in the commercial groundfish sector system. These constitute 168 regulated business entities, of which 1 is large and 167 are small.

The effects of the proposed action depend, essentially, upon two variables. First, the degree of federal subsidy offered to the commercial groundfish fishery. Second, the number of vessels anticipated to utilize electronic monitoring as a replacement for human at-sea monitors. Electronic monitoring is predicted to be substantially more cost-effective, particularly for the subset of most-active vessels in the groundfish fishery (those fishing more than 30-50 days per year).

Section 6.6.10.3 states that sufficient government funding for 100% coverage is budgeted through the end of fishing year 2022, and that NMFS expects funding to be available for 100% coverage through the end of fishing year 2023. If monitoring costs are 100% subsidized and monitoring coverage is provided on 100% of trips, the fishery overall is predicted to generate ~\$5 mil in additional revenues, due mostly to the removal of the management uncertainty buffer. These additional revenues are predicted to increase profits by approximately \$4.9 mil, taking into account the fact that the industry will not be paying for monitoring. If no vessels utilize electronic monitoring as a replacement for human at-sea monitors, the fishery is predicted to generate only \$1.4 mil in additional profits on \$1.5 mil in additional revenues.

This action proposes a monitoring coverage level “floor” of 40%, which applies only if no subsidy is available and industry is required to pay for 100% of its monitoring costs. Here, as at all coverage levels less than 100%, the management uncertainty buffers are not removed. In this

instance, the fleet is predicted to generate between \$1.5-2.0 mil less profit than under the status quo, or about a 4% reduction.

Vessels that opt to make fishing trips entirely west of 071° 30'W are exempt from the additional monitoring requirements. This may increase profits if the coverage level floor is implemented due to lack of federal subsidies for monitoring costs. Likewise, in the case where coverage levels are set higher than 40%, vessels opting to utilize this exemption will reduce monitoring costs covered via federal subsidies, allowing more funding to cover monitoring for a longer duration or at a higher level.

This action also imposes requirements on 135 small and 13 large federally permitted fish dealers. These requirements relate to suitable work environments for dockside monitors working with dealers offloading catch from vessels enrolled in the Maximum Retention electronic monitoring program. The requirements are similar to those afforded to other federally required dockside sampling programs and are not expected to result in any additional costs to federal dealers.

## **2.6 Assumptions used in evaluating impacts**

All assumptions used in the various models developed to produce the economic impacts analysis referenced here are included in the Economic Methods Appendix (Appendix IX).

## **2.7 Summary and Conclusions**

An IRFA has been prepared, as required by Section 603 of the Regulatory Flexibility Act (RFA). The IRFA consists of the various Amendment 23 analyses included in the EIS, its draft IRFA, and the preamble to the EIS.

Coverage levels above the 40% floor established in this action are a function of available federal subsidies. The range of predicted short-term revenue and profit affects from this action falls between a loss of ~\$2.0 mil when subsidies are unavailable and industry must pay for monitoring, and a gain of ~\$5.0 mil when subsidies are available to fund 100% coverage and the management uncertainty buffers are removed. Such impacts are well within the variability of revenues and profits experienced by business entities engaged in the federal groundfish fishery over the past few years.

There are no aspects of the proposed action that will impose differential effects on vessels owned by small or large regulated entities. This action would not have a significant economic impact on a substantial number of small entities.



New England Fishery Management Council

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Eric Reid, *Chair* | Thomas A. Nies, *Executive Director*

January 7, 2022

Mr. Michael Pentony  
Greater Atlantic Regional Administrator  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

Dear Mike:

Today, I received your request for changes to the Final Environmental Impact Statement for Amendment 23 to the Northeast Multispecies Fishery Management Plan. As requested, my staff electronically sent the corrected final submission of Amendment 23, to your staff in the Sustainable Fisheries Division at the Greater Atlantic Regional Fisheries Office.

Please contact me if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Nies".

Thomas A. Nies  
Executive Director