

means that we will post any personal information you provide us (see Public Comments, below, for more information).

**FOR FURTHER INFORMATION CONTACT:**

Michael Fris, Field Supervisor, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, CA 95825; telephone 916-414-6700. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 28, 2021, we published a proposed rule (86 FR 73914) to list the South Sierra and South Coast DPSs of the foothill yellow-legged frog as endangered and the North Feather and Central Coast DPSs of the foothill yellow-legged frog as threatened with rules issued under section 4(d) of the Act. The proposed rule opened a 60-day comment period, ending February 28, 2022. On January 31, 2022, we received a request to extend the public comment period. With this document, we extend the public comment period for an additional 30 days, as specified above in **DATES**.

**Public Comments**

We will accept written comments and information during the extended comment period on our proposed rule to list the South Sierra, South Coast, North Feather, and Central Coast DPSs of the foothill yellow-legged frog. We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal will be based on the best scientific and commercial data available. Our final determination will take into consideration all comments and any additional information we receive during the open comment period on the proposed rule.

Because we will consider all comments and information we receive during the open comment period, our final determinations may differ from our December 28, 2021, proposed rule (86 FR 73914). In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the proposed rule issued under section 4(d) of the Act (*i.e.*, the “proposed 4(d) rule”) for the North Feather or Central Coast

DPS if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions in the proposed 4(d) rule for the North Feather or Central Coast DPS to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of either DPS. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of either DPS.

If you already submitted comments or information on the December 28, 2021, proposed rule, please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of our final determinations.

Comments should be as specific as possible. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you assert.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support our determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered species or a threatened species must be made “solely on the basis of the best scientific and commercial data available.”

We request that you send comments and materials only by one of the methods listed in **ADDRESSES**. If you submit information via <https://www.regulations.gov>, your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on <https://www.regulations.gov> at Docket No. FWS-R8-ES-2021-0108.

**Authors**

The primary authors of this document are the staff members of the Fish and Wildlife Service’s Species Assessment Team and the California Great Basin Regional Office (Interior Region 10).

**Authority**

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), is the authority for this action.

**Martha Williams,**

*Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No.: 220214-0046]

**RIN 0648-BK17**

**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 23**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to approve, and implement through regulations, measures included in Amendment 23 to the Northeast Multispecies Fishery Management Plan, which the New England Fishery Management Council adopted and submitted to NMFS for approval. This action would adjust the existing industry-funded at-sea monitoring program for groundfish sectors to improve the accuracy of collected catch data (landings and discards) and catch accounting. The measures selected by the New England Fishery Management Council in Amendment 23 are intended to ensure there is a precise and accurate representation of catch to set catch limit levels that prevent overfishing and determine when catch limits are exceeded.

**DATES:** Comments must be received by March 30, 2022.

**ADDRESSES:** The New England Fishery Management Council (Council) has prepared an Environmental Impact Statement (EIS) for this action that describes the proposed measures in

Amendment 23 to the Northeast Multispecies Fishery Management Plan (FMP) and other considered alternatives, and analyzes the impacts of the proposed measures and alternatives. The Council submitted the amendment to NMFS, including the EIS, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and a Regulatory Impact Review (RIR). Copies of supporting documents used by the Council, including the EIS and RIR, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: <https://www.nefmc.org/library/amendment-23>.

You may submit comments, identified by NOAA-NMFS-2020-0144, by the following method:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov) and enter NOAA-NMFS-2020-0144 in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

**Instructions:** Comments sent by any other method or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:**  
Mark Grant, Fishery Policy Analyst,  
(978) 281-9145.

**SUPPLEMENTARY INFORMATION:**

**Amendment 23 Summary**

The Council initiated Amendment 23 to consider changes to the groundfish monitoring and reporting system to ensure it is providing accurate catch information necessary to manage the

fishery effectively. The alternatives considered in this action focus on measures that adjust the existing industry-funded sector monitoring program to improve the accuracy of collected catch data (landings and discards) and catch accounting. To address these issues, the Council adopted Amendment 23 to make a number of changes to the industry-funded sector monitoring program in order to:

- Replace the current process for calculating an annual monitoring coverage target for at-sea monitoring (ASM) with a fixed monitoring coverage target as a percentage of trips, dependent on Federal funding. The coverage target would be 100 percent of trips for 4 years, but could be set at less than 100 percent at the maximum level for which there are sufficient Federal funds to support all agency and industry costs. Beginning in year 5, the ASM coverage target would be 40 percent of trips but NMFS could increase ASM coverage above the 40-percent target when Federal funding is available to support all industry costs. For years with a 40-percent coverage target, Federal funding would be used to first pay NMFS costs and then support as much of industry costs as possible. Sectors would be responsible for paying only the industry costs above the portion supported by Federal funding.

- Approve additional electronic monitoring (EM) technologies as an alternative to human at-sea monitors;
- Exclude from the monitoring requirement all trips in geographic areas with low groundfish catch;
- Require periodic evaluation of the monitoring program and exclusions from the monitoring requirement;
- Remove the management uncertainty buffer from the portion of the ABC allocated to the sector catch share when the monitoring coverage target is 100 percent; and
- Grant authority to the Northeast Regional Administrator to revise sector reporting requirements to streamline reporting for the industry.

The proposed measures are discussed in detail below under Discussion of Proposed Rule Measures. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), we are required to publish proposed rules for comment after preliminarily determining that they are consistent with applicable law. The Magnuson-Stevens Act allows us to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the fishery management

plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. Otherwise, we must defer to the Council's policy choices. We are seeking comment on the Council's proposed measures in Amendment 23 and whether they are consistent with the Northeast Multispecies FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law.

**Discussion of Proposed Rule Measures**

*ASM Coverage Target*

Amendment 23 would replace the current method for determining the ASM coverage target for deploying human at-sea monitors, including the coefficient of variation (CV) standard, stock status criteria, and the need for an annual determination by NMFS, with a fixed coverage target as a percentage of trips, dependent on Federal funding. Currently, NMFS is required to determine an ASM coverage target that at least meets the 30-percent CV specified in the Standardized Bycatch Reporting Methodology at the overall stock level for each stock of regulated species and ocean pout; and to monitor sector operations, to the extent practicable, in order to reliably estimate overall catch by sector vessels. Analyses included in the Amendment 23 EIS (see **ADDRESSES**) demonstrated the CV standard was no longer an effective basis for determining coverage due to bias that results from differences between trips that are monitored and trips that are not monitored.

To address bias, the coverage target would be 100 percent of trips for 4 years, provided Federal funding can support agency and industry costs. The ASM coverage target in years 1-4 could be less than 100 percent, and would be set at the maximum level for which there are sufficient Federal funds to support all agency and industry costs. The at-sea monitoring coverage target would default to 40 percent in years 1-4 if Federal funding cannot completely support all industry costs for a coverage target greater than 40 percent. In year 5 and beyond, the coverage target would be 40 percent unless replaced by a subsequent Council action. However, Amendment 23 would also allow for increased coverage in year 5 and beyond, when Federal funding is available to support industry costs. For years with a 40-percent ASM coverage target, Federal funding would be used to first pay NMFS costs and then support as much of industry costs as possible. The current method used to set ASM target coverage levels is not effective to estimate catch because observed trips

are not representative of unobserved trips. As a result, biased catch data undermines management of the fishery. It is not possible at this time to calculate an ASM coverage target less than 100 percent that would eliminate or minimize bias sufficiently to ensure catch accountability because the current catch data are not representative of the entirety of the sector fishery. The Council chose a fixed ASM coverage target of 100 percent to address bias by establishing a baseline of accurate and precise catch information for the fishery. The 100-percent coverage target would increase the accuracy of catch estimates and reduce the potential for bias more than any other coverage target considered. Setting the coverage target at 100 percent also simplifies compliance and enforceability of the monitoring program by removing a complex system of stratified random sampling. In addition, while improved monitoring would not solve all of the issues facing the fishery, a 100-percent coverage target is expected to provide more information to support better management of this fishery. Making the coverage target contingent on Federal funding for industry costs balances the need for improved monitoring with the economic effects to the fishery. Combined with the option for vessels to use EM (see “*Electronic Monitoring*” below) and removing the management uncertainty buffers from the sector portion of the annual catch limit (ACL) (see “*Elimination of Management Uncertainty Buffer for Sector ACLs*” below), the increased cost to industry is reduced. ASM coverage targets of at least 40-percent on a consistent basis would be an increase from attained coverage levels to date. Higher ASM coverage, even for a limited time, along with data from EM, could improve the cost-effectiveness of the monitoring system by providing a baseline of accurate and precise catch information to be used in the evaluation of the program that is planned (see “*Review Process for Monitoring Coverage Rates*” below).

The Council also selected a minimum ASM coverage target of 40 percent in the event that Federal funds are not available in a given year in order to ensure accurate catch information is still provided while addressing concerns about industry costs. The minimum target level of 40 percent will be funded either by sectors (if no Federal funds are available) or a combination of sectors and Federal funds.

The availability of EM also provides a potential option for sector monitoring programs to ensure catch accountability.

The EM models address bias by requiring cameras to monitor fishing activity during the entirety of all sector groundfish trips. The availability and use of EM will also provide additional data to compare to ASM coverage and inform NMFS and the Council on the Amendment 23 coverage target’s performance. NMFS proposes several administrative procedural changes to implement the revised ASM coverage target, but would retain other aspects of the current requirements. All vessels would continue to provide advanced notice to NMFS through the pre-trip notification systems (PTNS) for the purposes of selecting vessels for ASM and observer deployment. The agency would continue to issue waivers from ASM for selected trips in specific circumstances, including if an observer or at-sea monitor is not available to cover the trip, or for other logistical reasons (e.g., late observer, safety), consistent with its current practice.

Each year, NMFS would evaluate available Federal funding. Consistent with the Magnuson-Stevens Act and other applicable laws, NMFS would determine how much Federal funding is available for the groundfish sector monitoring program and then use that in conjunction with other available information (e.g., recent monitoring costs, estimate of the number of vessels choosing EM) to calculate the ASM coverage target between 40 and 100 percent for the coming fishing year. This funding-based determination would replace the current annual process for determining the ASM coverage target for the sector monitoring program.

NMFS would announce the ASM coverage target at least 3 weeks before the annual sector enrollment deadline set by NMFS, if Federal funding information is available (see “*Determining Total Monitoring Coverage at a Time Certain*” below). NMFS currently anticipates that existing available Federal funding would be sufficient to fund at least 2 years with a 100-percent ASM coverage target.

#### *Electronic Monitoring*

Amendment 23 would approve the Audit Model and the maximized retention model of EM (MREM) for sector vessels to use, in place of ASM, to satisfy the sector monitoring requirement. EM is expected to provide important information for NMFS and the Council to consider during the first 4 years and to provide a suitable basis for sector monitoring programs to ensure catch accountability. A vessel using EM would still be subject to Northeast Fishery Observer Program (NEFOP) coverage, which is set at a

level to meet the standardized bycatch reporting methodology requirements of the FMP and the Magnuson-Stevens Act. Amendment 23 does not remove or alter the existing authority for the Regional Administrator to deem types of EM technology sufficient to be used in place of human at-sea monitors. However, the two EM models in Amendment 23 would be available for sectors to include in their operations plans without requiring a separate determination by the Regional Administrator. Additional forms of EM would still be subject to approval or disapproval by NMFS.

The audit model is one of the EM models included in Amendment 23. NMFS previously determined the EM audit model is sufficient to verify a vessel’s submission of information on groundfish discards and other relevant information (e.g., date and time, gear category, location) for the purpose of catch accounting, provided that the vessel’s captain and crew adhere to catch handling and reporting requirements as described in the vessel-specific monitoring plan (VMP) (86 FR 16686; March 31, 2021). The VMP details specific fish handling protocols, policies, and procedures; as well as the number and location of cameras. VMPs are reviewed and approved by NMFS prior to a vessel enrolling in EM to ensure the set-up is adequate to support data collection needs and requirements. Under the audit model, the vessel operator and crew hold groundfish discards on a measuring board and under a camera prior to discarding, and discard other species in view of cameras at designated discard control points. The vessel operator estimates the total weight of groundfish discards on an electronic vessel trip report (eVTR), and submits the video footage to the EM service provider. The EM service provider reviews trips selected for audit and develops an independent estimate of groundfish discards for the trip. The EM data are compared to verify the eVTR-reported catch and discards. NMFS sets the video review rates for audit model trips and conducts a secondary review of some trips to evaluate EM provider performance. NMFS may revise audit rates to ensure accurate reporting and minimize costs. For instance, vessels that demonstrate higher performance in terms of compliance with the VMP and accuracy of discard reporting could have lower review rates than vessels that do not perform as well. Additional detail of the audit model requirements are contained in the Fishing Years 2021–2022 Sector Operations Plan, Contract, and

Environmental Assessment Requirements guide (<https://bit.ly/3pdau1L>).

Amendment 23 would also approve the MREM model. The goal of MREM is to verify compliance with catch retention requirements and use dockside monitoring (DSM) to collect information on allocated groundfish discards at the dock that otherwise would be collected at sea. Under the MREM model, on all sector EM trips, the vessel operator and crew are required to retain and land all catch of allocated groundfish, including fish below the minimum size, specified at 50 CFR § 648.83, that they would otherwise be required to discard. Unallocated regulated species, ocean pout, and non-groundfish species must be handled in accordance with standard commercial fishing operations. Any allowable discards must occur at designated discard control points on the vessel, described in the vessel's VMP. EM data from the trip would be reviewed by the EM service provider to verify that the vessel operator and crew complied with the catch retention requirements. A human dockside monitor would meet the vessel at port upon its return from each trip to observe the offload and collect information on the catch (particularly fish below the minimum size). Landings of all fish by MREM vessels, including fish below the minimum size in the regulations, would be reported to NMFS by the dealer.

Approving EM models as alternatives to human ASM provides each sector the flexibility to choose the monitoring options (ASM, audit model EM, MREM) that best meet the needs of its members and ensure catch accountability. Through their operations plans, sectors would develop monitoring plans that describe how the sector would use the chosen monitoring tools. The intent of implementing the audit model and MREM through Amendment 23 is to make alternatives to human ASM available now while also retaining authority for the Regional Administrator to approve additional tools in the future. The goal is to provide sectors with additional tools to monitor catch that ensure precise and accurate catch estimation and minimize the potential for bias because EM is active on 100 percent of sector groundfish trips. These EM options are expected to eliminate bias and eliminate the coordination of human logistics for trips not assigned NEFOP coverage. Both EM models increase flexibility for sectors and their vessels to choose the monitoring option that best suits their business and operational needs while offering potential reductions in monitoring

costs. The audit model may be most suitable for lower volume groundfish trips because it requires extra catch handling. MREM may be better suited for larger volume vessels where the catch handling protocols of the audit model present logistical challenges. DSM is a required component of MREM and may be easier to facilitate at dealers that are prepared to handle large volume offloads. The economic analyses in the EIS suggest that when both the audit model and MREM are available to vessels, as alternatives to ASM, the costs of 100-percent monitoring may be reduced for individual vessels and the fishery as a whole.

A vessel may only use the audit model or MREM to meet the sector monitoring requirement if its sector includes that EM model in its approved operations plan. A vessel must opt into an EM program for an entire fishing year, with two exceptions. First, a sector may allow a vessel a single opportunity to opt in/out of EM at any time during a fishing year if the sector operations plan includes both an approved ASM and EM plan. Second, if a vessel changes to a gear type not covered in the VMP, the vessel may temporarily become an ASM vessel until the VMP authorizing the use of the new gear type is approved. Vessels using EM must have their EM system operational and running on every sector groundfish trip, including trips that would be excluded from the ASM requirement (see “*Exclusion from Monitoring Requirements for Certain Vessel Under Certain Conditions*” below), unless issued a waiver by NMFS or assigned an ASM. During each sector EM trip taken by a vessel, the EM system records all fishing activity onboard the vessel. The vessel operator and crew sort fish and make any allowable discards within view of the cameras in accordance with the catch handling protocols described in the VMP.

NMFS proposes to implement the audit model consistent with the operational program implemented in fishing year 2021. Amendment 23 specified that vessels using audit model EM in place of ASM would be required to report discards at the haul level. However, the current operational audit model allows vessels to report discards at the sub-trip level, rather than the haul level. Haul-level reporting would require the vessel to fill out a new eVTR for each haulback of a trawl net, each haul of a string of gillnets, and each haul of fixed hook gear while sub-trip-level reporting requires a new eVTR only when a vessel changes gear type or mesh size, or physically changes location to a different statistical area. As

part of implementing Amendment 23, NMFS proposes to allow vessels using the audit model to continue reporting discards at the sub-trip level, rather than the haul level, and is soliciting comment on this proposal (see “*Sector Reporting*” below).

NMFS proposes to implement MREM consistent with the NOAA Fisheries MREM program detailed in the draft Sector Operations Plan, Contract, and Environmental Assessment Requirements guide for fishing year 2022 available at: [https://media.fisheries.noaa.gov/2022-01/210826\\_SectorOpsEAGuidanceFY2021\\_2022\\_Revised.pdf](https://media.fisheries.noaa.gov/2022-01/210826_SectorOpsEAGuidanceFY2021_2022_Revised.pdf). Under MREM, the vessel operator and crew must adhere to the following catch handling requirements: Retain and land all catch of allocated groundfish, including any sublegal-size catch and unmarketable fish; discard unallocated groundfish stocks (*i.e.*, windowpane flounder, ocean pout, wolffish, Atlantic halibut) at designated discard control points; handle all other species in accordance with standard commercial fishing operations, including adhering to possession limits for halibut and non-groundfish species; and sort unmarketable fish separately from fish below the minimum legal size.

MREM vessels must also participate in a DSM program. NMFS proposes to initially continue to operate a DSM program for MREM vessels while working with partners to pilot a third-party DSM program. Subsequently, an industry-funded DSM model would be implemented and sectors would be required to contract with approved DSM providers to cover their MREM vessels. The vessel operator must notify the DSM program of its intention to sail prior to beginning a sector EM trip. Either the vessel operator or dealer must provide an offload time to the DSM program in advance of landing. The advance notice of landing and offload schedule will be dependent on the nature of the vessel's activity (*e.g.*, day boat vs trip boat vessels) and will be defined in the vessel's VMP. The vessel operator, crew, and dealer must offload all allocated groundfish in the presence of the dockside monitor. The vessel operator and crew may not begin offloading unless a dockside monitor is present or they have received a waiver from the DSM program. The vessel operator must allow the dockside monitor access to the fish hold immediately following the offload in order to confirm all allocated groundfish were offloaded. The vessel operator and crew or dealer personnel must separate sublegal allocated groundfish catch by species, except in instances where the

sublegal component of a high-volume target species (*i.e.*, redfish, haddock, and pollock) is combined with fish in the terminal legal-sized market category. The vessel operator and crew or dealer personnel must also separate unmarketable fish from fish below the minimum size.

NMFS also proposes requirements for Northeast multispecies dealers to facilitate DSM for MREM vessels. Federally permitted Northeast multispecies dealers would be required to allow dockside monitors access to their premises, scales, and any fish received from vessels participating in the MREM 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. The primary dealer would be required to retain all sublegal allocated groundfish catch in order to be weighed and sampled by the dockside monitor. Dealers would be required to clearly mark all containers containing sublegal catch to facilitate tracking, and would be required to provide settlement documents to the DSM program for any allocated groundfish forwarded to secondary dealers. This is intended to provide a ready means for dealers to show when they possess undersized fish landed from MREM vessels. The implementing regulations deemed by the Council inadvertently omitted this requirement, but it is included in the regulations proposed in this rule. We highlight this change from the deeming requirements to ensure the Council and the public have an opportunity to comment on this addition to the implementing regulations.

Dealers would also be required to provide dockside monitors with access to facilities equivalent to what is provided to the dealer's staff, including: A safe sampling station, with shelter from weather, for dockside monitors to conduct their duties and process catch; access to bathrooms; and access to facilities for washing equipment with fresh water. The intent of the dealer requirements is not to require dealers to create or provide facilities that do not already exist, but to ensure dockside monitors have access to facilities equivalent to what is available to the dealer's staff.

The proposed EM programs raise several implementation issues that NMFS is highlighting for comment. First, as noted above, NMFS proposes that vessels using EM must have their EM system operational and running on every sector groundfish trip, including trips that would be excluded from the ASM requirement, unless issued a

waiver by NMFS or assigned an ASM. Throughout the development of EM, we have found that vessels are most successful at complying with their VMP when it is followed on all groundfish trips. Further, this requirement is consistent with the Council's intent that EM tools meet or exceed the ASM coverage target to ensure catch accountability. Vessels that are interested in fishing in ways that would be excluded from ASM (see "*Exclusion from Monitoring Requirements for Certain Vessel Under Certain Conditions*" below) may choose to use ASM, rather than adopting EM, and be excluded from the sector monitoring requirement on trips with low groundfish catch. Second, some discards of allocated groundfish occur on MREM trips and the Council should consider how to account for those fish. This would include operational discards (fish that drop out of the gear into the ocean, fish taken by birds), accidental discards, and intentional discards. These discards cannot always be estimated using EM technology. Third, vessels must discard any red hake in excess of the possession limit, but those fish cannot be distinguished from white hake using cameras. The Council may want to consider this interaction between the NE Multispecies FMP and the small-mesh fishery and potential methods for fully accounting for catch of these two stocks by MREM vessels.

#### *Determining Total Monitoring Coverage at a Time Certain*

Amendment 23 would require the Regional Administrator to determine the ASM coverage target at least 3 weeks prior to the annual sector enrollment deadline set by NMFS. The date NMFS announces the annual ASM coverage target in past years has varied from January 25 to March 26 and has sometimes been later than the sector roster deadline for that fishing year (see Table 65 in the EIS, see **ADDRESSES**). This action sets a fixed ASM coverage target; however, the monitoring coverage target is dependent on available Federal funding (see "*ASM Coverage Target*" above and "*Higher Monitoring Coverage Levels if NMFS Funds Are Available*" below). The Council identified the importance for industry to know the ASM coverage target at a time certain in advance of the start of the fishing year because the ASM coverage target may have industry costs when Federal funding cannot at least support NMFS and industry costs for a 40-percent ASM coverage target. Therefore, this rule proposes NMFS will announce the ASM coverage target at least 3 weeks before the annual sector

enrollment deadline set by NMFS, if Federal funding information is available. In years when Federal funding information is not available prior to the sector enrollment deadline, the ASM coverage target will be announced as soon as practicable.

#### *Review Process for Monitoring Coverage Rates*

As part of the revisions to the groundfish sector monitoring program, Amendment 23 includes a Council review process to evaluate the effectiveness of the increased ASM coverage target. The Council would undertake the review once two full fishing years of data are available (likely in year 3 following implementation), and periodically thereafter. The Council review process is intended to be flexible and somewhat general, but would include establishing metrics and indicators of how well the monitoring program improved accuracy while maximizing value and minimizing costs. As a priority for 2021, the Council recommended that the Groundfish Plan Development Team develop the review process metrics based on the Council's final preferred alternatives in Amendment 23. The Council discussed that the scope of the review would be different if 100 percent coverage levels are selected compared to lower coverage levels. The Council selected a fixed ASM coverage target 100 percent of trips, but also selected a default ASM coverage target of 40-percent coverage in the event that Federal funds are not available to support industry costs for higher monitoring coverage. The review process if the ASM coverage target is 100 percent could include metrics such as discard estimate CVs and a measure of how catch (discards and landings) changed following implementation of comprehensive monitoring. For lower ASM coverage targets, the review may include additional metrics to ensure monitoring targets were met and were effective, and might include analyses of whether the program is operating in a way the Council intended, whether catch is being measured accurately, or whether there is evidence of bias.

The intent of the review process is to evaluate whether the revised groundfish sector monitoring program, and particularly the increased ASM coverage target, is meeting the Council's goal of improved accuracy of catch data and catch monitoring while maximizing the value of the data collected and minimizing the costs of the monitoring program. The Council would be responsible for the review and the results would support potential future Council action to refine the groundfish

sector monitoring program or revise the ASM coverage target. NMFS may also review the sector monitoring program to assist the Council in its review and to ensure the sector monitoring program meets requirements of the Magnuson-Stevens Act, particularly the requirement to specify ACLs at a level that prevents overfishing, including measures to ensure accountability.

#### *Waivers From Monitoring Requirements*

Amendment 23 includes a provision to allow waivers exempting individual vessels from industry-funded monitoring requirements, for either a trip or the fishing year, if coverage would be unavailable due to insufficient funding for NMFS administrative costs to meet the ASM coverage target. The waivers would include coverage for ASM and EM, including DSM for MREM vessels. Allowing the potential to issue these waivers preserves the Council's intent to increase monitoring in the groundfish fishery without creating a requirement that could prevent vessels from participating in the groundfish fishery if monitoring coverage was not available.

As described above, NMFS would evaluate available Federal funding each year (see "*ASM Coverage Target*" above). If NMFS determines that there is insufficient funding to pay for its cost responsibilities, as defined in § 648.11(g)(3), for an ASM coverage target of at least 40 percent, then vessels would continue to be required to notify NMFS of all trips through the PTNS, but NMFS would issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements. If NMFS waives monitoring requirements due to insufficient funding, as part of its review the Council would consider whether changes to the FMP were necessary to ensure effective management if the ASM coverage target was less than 40 percent.

#### *Exclusion From Monitoring Requirements for Certain Vessel Under Certain Conditions*

Amendment 23 excludes sector fishing trips fished in their entirety west of 71°30' W Longitude from the ASM requirement. The Council included this provision to minimize the costs of the overall increase in monitoring because the majority of groundfish are caught in waters east of this boundary. The catch composition includes little to no catch of many groundfish stocks, with substantial catch of a few groundfish stocks, for sector vessels fishing exclusively west of 71°30' W Longitude (see Table 73 of the EIS). However, the

proportion of commercial catches for some stocks (Southern New England yellowtail flounder and winter flounder, southern windowpane flounder, and ocean pout) caught in this area has been over 25 percent in recent years.

Vessels would continue to be required to notify NMFS of all trips through the PTNS, but NMFS would issue a waiver for a sector trip exempting the vessel from ASM on a trip fishing exclusively west of 71°30' W Longitude. Vessels on a trip excluded from the ASM requirement under this provision would be required to comply with the VMS declaration requirements at § 648.10(g)(3), and the transiting requirements at § 648.81(e) when east of 71°30' W Longitude. Vessels using EM to satisfy the sector monitoring requirement would be required to have their system turned on and comply with their vessel monitoring plan on all trips, including trips fishing exclusively west of 71°30' W Longitude.

This proposed exclusion from the ASM requirements raises several implementation issues and concerns that NMFS is highlighting for comment and future Council consideration. First, as discussed in more detail above (see "*Electronic Monitoring*" above), NMFS proposes that vessels using EM must have their EM system operational and running on every sector groundfish trip, including trips that would otherwise be excluded from the ASM requirement under this provision, unless issued a waiver by NMFS or assigned an ASM. Therefore, this exclusion would not apply to EM vessels. Second, any catch of groundfish on these trips would not be monitored and because the 71°30' W Longitude line splits three statistical areas (533, 537, and 539), some trips in those statistical areas will have ASM coverage and others will not, complicating any attempt to use observed trips to estimate catch on unobserved trips in those areas, including during the Council's review (see "*Review Process for Monitoring Coverage Rates*" above). The Council should consider these issues when considering uncertainty buffers in future actions setting specifications.

#### *Review Process for Vessels Excluded Exempted From Commercial Groundfish Monitoring Program Requirements*

The monitoring revisions in Amendment 23 establish a process for reviewing measures that exclude certain vessels from the groundfish monitoring program requirements based on catch composition. This includes the existing gear-based exclusion from the ASM requirement, implemented by Framework 55, for sector trips that

exclusively fish using gillnets of 10-inch (24.5-cm) or larger mesh in the Inshore Georges Bank and/or the Southern New England Broad Stock Areas; and the Amendment 23 provision excluding sector fishing trips taken in their entirety west of 71°30' W Longitude (see "*Exclusion from Monitoring Requirements for Certain Vessel Under Certain Conditions*" above). The Council will conduct this review after two years of fishing data are available and every three years after that.

The intent of the review process is to evaluate whether the trips excluded from the ASM requirement continue to catch small amounts of groundfish. The Council raised a concern that it did not want vessels to change their fishing behavior and target groundfish on trips excluded from the ASM requirement. The review would also be important to evaluate whether exclusions from the ASM requirement undermine the monitoring program or other measures of the FMP. The Council would be responsible for the review and the results would support potential future Council action.

#### *Higher Monitoring Coverage Levels if NMFS Funds Are Available*

Amendment 23 would allow for ASM at higher coverage levels than the ASM coverage target selected by the Council, up to 100 percent, if NMFS determines funding is available to cover the additional administrative costs to NMFS and sampling costs to industry in a given year. This measure would apply to year 5 and later, when the ASM coverage target would otherwise be 40 percent of sector trips.

Monitoring coverage of 100 percent of trips, or as close to 100 percent as achievable increases the accuracy of catch estimates and at least reduces, if not eliminates, the potential for bias. Higher coverage levels, even for a limited time, could inform understanding of the magnitude of bias, and inform future actions on the value of higher monitoring coverage levels. ASM coverage of 100 percent of trips is currently considered to remove or reduce bias to the greatest extent practicable; however, it may be impracticable for industry or NMFS to fund costs associated with complete ASM coverage, resulting in a lower ASM coverage level. Higher levels of ASM coverage would substantially increase costs to NMFS and sectors. Making the ASM coverage target contingent on Federal funding for industry costs balances the need for improved monitoring with the economic impacts on the fishery.

Each year, NMFS would evaluate available Federal funding and determine how much Federal funding is available for the groundfish sector monitoring program and then use that in conjunction with other available information (e.g., recent monitoring costs, estimate of the number of vessels choosing EM) to calculate the ASM coverage target for the coming fishing year.

#### *Elimination of Management Uncertainty Buffer for Sector ACLs*

Amendment 23 includes an option to revise the management uncertainty buffer for the sector portion of the ACL for each allocated groundfish stock to be set to zero. The NE Multispecies includes a process for setting an overfishing limit (OFL) for groundfish stocks. The OFL represents the maximum amount of fish that can be caught in a year without resulting in overfishing. The Council typically recommends an acceptable biological catch (ABC) for a groundfish stock that is lower than the OFL to account for scientific uncertainty. The Council sets an ACL at a level below the ABC to account for management uncertainty, and this serves as a buffer to prevent the fishery from exceeding the ABC. The management uncertainty buffer accounts for the possibility that management measures will result in a level of catch greater than expected. The Council evaluates the management uncertainty buffers in each specification-setting action.

The revised management uncertainty buffers would apply only to sectors, and not to the common pool component of the fishery, or other sub-ACLs or sub-components for any stocks. The management uncertainty buffer may be removed only in years in which the ASM coverage target is 100 percent. The process by which the Council evaluates and sets management uncertainty buffers remains unchanged and the Council could adjust management uncertainty buffers in future actions. The need for a management uncertainty buffer for the sector sub-ACL would continue to be evaluated as part of each specification action.

Monitoring adequacy, precision, and enforceability of management measures are three of the elements considered in setting the management uncertainty buffer. An ASM coverage target of 100 percent could minimize all of those sources of management uncertainty for the sector fishery. The full accountability associated with comprehensive monitoring could remove uncertainty about whether management measures successfully

restrain catch by sector vessels to the sector quotas. Eliminating uncertainty in quantifying true sector catch could make the management uncertainty buffer unnecessary for the sector program. Removing the buffer provides direct benefits to the fishery by providing opportunity for additional catch and revenue. Increased catch and revenue may reduce the net costs of increased monitoring.

NMFS would make an annual determination prior to the start of the fishing year as to whether the buffers would be eliminated based on the ASM coverage target set for the fishing year. If Federal funds are not available for 100 percent ASM coverage and a lower target coverage level is set, the management uncertainty buffers would be in place for that fishing year, subject to the Council's review as part of each specification action. 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, the PDT would recommend an appropriate management uncertainty buffer for the sector sub-ACLs as part of actions setting specifications.

This proposed elimination of the uncertainty buffer for sectors raises several issues that NMFS is highlighting for comment and future Council consideration. First, as discussed above, Amendment 23 excludes sector fishing trips taken in their entirety west of 71°30' W Longitude from the ASM requirement, but for some stocks (southern New England yellowtail flounder and winter flounder, southern windowpane flounder, and ocean pout) catch in this area has been over 25 percent in recent years. Further, 71°30' W Longitude splits three statistical areas (533, 537, and 539), making estimation of catch on those trips more complicated. Second, some operational discards (e.g., fish fall from the net, birds steal fish) of allocated groundfish occur on MREM trips and the Council should consider how to account for those fish. Third, eliminating the uncertainty buffer from the sector allocations would result in negligible sector carryover because sector carryover from one year to the next is limited by the management uncertainty buffer between the ACL and ABC in year 2. These issues arose after the Council made its final decision on Amendment 23. We highlight these issues to ensure the Council and the public have an opportunity to comment on how NMFS proposes to address these issues.

#### *Sector Reporting*

Amendment 23 would authorize the Regional Administrator to modify the sector monitoring requirements at § 648.87(b)(1)(v) and the sector reporting requirements at § 648.87(b)(1)(vi) to streamline the sector reporting process. Each week, each sector must submit to NMFS a summary catch report, including quota balances; a detailed catch report with catch for each trip; and a trip issue report detailing any enforcement or reporting compliance issues, violations of sector operations and regulations, and general problems with monitoring or sector operations. When a sector has caught 90 percent of any quota, that sector must submit daily catch reports. Each sector must also submit an annual report that summarizes the fishing activities of participating vessels.

More efficient methods might be developed that would still involve timely monitoring and reconciliation of data sources between sectors and NMFS. For example, NMFS could eliminate the requirement for sectors to submit weekly and daily reports and instead provide monitoring summaries for the sectors to use for catch accounting and managing annual catch entitlements, while continuing the process where NMFS and sectors reconcile catch data to confirm accuracy. Authorizing the Regional Administrator to streamline the sector reporting process could help to reduce reporting redundancies, provide flexibility to sectors and sector managers, and improve timeliness of data processing.

As discussed above (see "*Electronic Monitoring*"), Amendment 23 specified that vessels using Audit Model EM in place of ASM would be required to report discards at the haul level. However, the current operational Audit Model allows vessels to report discards at the sub-trip level, rather than the haul level. As part of implementing Amendment 23, NMFS proposes using the authority to streamline sector reporting requirements to allow vessels using the Audit Model to continue reporting discards at the sub-trip level, rather than the haul level, and is soliciting comment on this proposal.

#### *Addition to List of Framework Items*

The regulations at § 648.90 list management measures that may be changed or implemented through specifications or framework actions. During the development of Amendment 23, the Council identified a list of specific issues that may be addressed through future specifications actions or

framework adjustments. All alternatives considered in Amendment 23 would be added to the list of FMP items that may be considered in a future framework. Specifically, this includes:

- The addition of new sector monitoring tools (e.g., EM, other technologies or approaches) that meet or exceed the Council’s selected monitoring standard;
- Setting vessel-specific coverage targets instead of coverage targets applicable at the sector level; and
- All the Amendment 23 measures discussed in detail above.

Amendment 23 includes two options for electronic monitoring that would be available for sectors to include in their operations plans without requiring a separate determination of sufficiency by NMFS. Further evolution of technology or development of analytical methods could lead to additional or better tools for achieving the goals of the monitoring program. It is not possible to forecast technology changes, but it is expected that in the future there may be additional technologies that would benefit the monitoring program that the Council could adopt through a framework.

A vessel-specific coverage level would require each vessel to meet the

target coverage level, rather than evaluating the target at the sector level. The intent would be to reduce the variation in the amount of industry-funded monitoring coverage applicable to each vessel.

The intent of adding all alternatives considered in Amendment 23 to the list of framework items is to allow adjustments to groundfish monitoring program to be considered in a framework action. This would support a Council response to the new review requirements that would be implemented as part of Amendment 23. The regulations at § 648.90(a)(2)(iii) would be revised to specify that the Council could consider these items in a future framework adjustment.

**Regulatory Adjustments and Corrections Under Regional Administrator Authority**

NMFS is proposing several changes to the regulations consistent with section 305(d) of the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. These adjustments do not make any substantive changes to the

current regulations, but are intended to improve the clarity of the regulations.

First, NMFS would revise § 648.2 to add definitions of terms related to EM that are used in the implementing regulations for Amendment 23 and clarify and consolidate definitions related to individuals that collect data for NMFS. Second, NMFS would move the sector monitoring program regulations from § 648.87 to § 648.11. Third, NMFS would revise § 648.11 to update the names of divisions within NMFS. Fourth, NMFS would revise §§ 648.2, 648.10, 648.11, 648.14, 648.51, 648.80, 648.86, and 648.202 to clarify that individuals undergoing observer training are included in regulatory provisions that apply to certified observers. Finally, NMFS would revise § 648.14(k) to correct a typographical error where text is missing and to clarify application of the prohibitions to EM.

Finally, due to the extensive regulatory changes in this action, we are updating references throughout the groundfish regulations that will change based on the proposed regulatory adjustments. We have included a summary of all of the proposed regulatory changes in this rule in Table 1.

TABLE 1—SUMMARY OF PROPOSED REGULATORY CHANGES TO 50 CFR PART 648

Section	Authority	Summary of proposed changes
§ 648.2	Amendment 23 and 305(d).	The existing definition of “electronic monitoring” is revised and new definitions for “electronic monitoring audit model” and “electronic monitoring maximized retention model” are added to address the EM models included in Amendment 23. A new definition for “electronic monitoring provider staff” is added to accommodate monitoring staff that are not involved in at-sea or dockside monitoring tasks. The existing definition of “observer/sea sampler” is deleted and the existing definition of “observer or monitor” is revised to cover any person, including trainees, who collects observer information, operational fishing data, biological data, or economic data for conservation and management purposes, whether they work on a vessel or on shore. The definitions of “slippage in the Atlantic herring fishery,” “slip(s) or slipping catch in the Atlantic herring fishery,” and “video reviewer” are revised to include staff in training.
§ 648.10	305(d)	Paragraph (f)(4)(i) is revised to include staff in training.
§ 648.11	Amendment 23 and 305(d).	The monitoring coverage regulations are revised to include the groundfish sector monitoring program regulations currently codified in § 648.87. The newly added groundfish sector monitoring program regulations include revisions and additions to the text formerly codified in § 648.87 to incorporate the proposed measures to implement Amendment 23. This section is also revised to clarify the insurance requirements for monitoring providers, to clarify that individuals undergoing observer training are included in regulatory provisions that apply to certified observers, and to update the names of divisions within NMFS.
§ 648.14	Amendment 23 and 305(d).	The prohibitions are revised to address new regulations implementing Amendment 23 and to revise citations associated with moving the groundfish sector monitoring program regulations currently codified in § 648.87 to § 648.11. The prohibitions are also revised to address changes to the definitions in § 648.2 that include monitoring staff that are not involved in at-sea or dockside monitoring tasks and trainees. Prohibitions are added to address the dockside monitoring requirements applicable to dealers at § 648.11 that implement Amendment 23. Section 648.14(k)(3) is revised to incorporate missing text stating it is prohibited to engage in the behaviors listed in sub-paragraphs. Sections 648.14(i)(1)(ix)(B) and (r)(2)(iv) are also revised to include staff in training.
§ 648.51	305(d)	§§ 648.51(c)(4) and (e)(3)(iii) are revised to include staff in training.
§ 648.80	305(d)	§§ 648.80(d)(3) and (e)(2)(ii) are revised to include staff in training.
§ 648.83(a)(1)	Amendment 23	The text regarding minimum fish sizes for commercial vessels is revised to exclude fish landed by MREM vessels from the minimum sizes to implement Amendment 23.
§ 648.85	Amendment 23 and 305(d).	Section 648.85(e)(1)(viii)(C) is revised to address the participation of MREM vessels in the universal sector exemption for targeting redfish.
§ 648.86	Amendment 23	The text regarding NE multispecies possession limits for commercial vessels is revised to exclude fish landed by MREM vessels to implement Amendment 23. Section 648.86(a)(3)(ii)(A)(7) is also revised to include staff in training.
§ 648.87	Amendment 23	Section 648.87 is revised by removing the groundfish sector monitoring program regulations that are being moved to § 648.11, redesignating the remaining paragraphs, and updating citations to the new locations of the monitoring regulations.
§ 648.90	Amendment 23	Section 648.90 is revised to include all Amendment 23 measures as frameworkable items. The potential to implement vessel-specific ASM coverage targets was also added to the list of frameworkable items consistent with Amendment 23. New regulatory text was added specifying that the sector portion of the management uncertainty buffer for allocated stocks would be set to zero when the coverage target is 100 percent, unless the Council chooses to incorporate a different amount of management uncertainty for sectors.



TABLE 1—SUMMARY OF PROPOSED REGULATORY CHANGES TO 50 CFR PART 648—Continued

Section	Authority	Summary of proposed changes
§ 648.202 .....	305(d) .....	Section 648.202(b)(1) is revised to include staff in training.

**Classification**

NMFS is issuing this rule pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, which provide specific authority for implementing this action. Pursuant to Magnuson-Stevens Act section 305(d), this action is necessary to carry out the NE Multispecies FMP, through administrative changes revising the existing implementing regulations for the groundfish sector monitoring program to be consistent with the industry-funded monitoring program regulations, moving the groundfish monitoring program implementing regulations to the same chapter as other industry-funded monitoring programs, and improving the clarity of the existing regulations. Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The New England Fishery Management Council prepared a final environmental impact statement for Amendment 23 to the NE Multispecies FMP; a notice of availability was published on January 21, 2022 (87 FR 3298). A target ASM coverage rate of 100 percent, higher than past and current coverage levels, will be in place, if sufficient Federal funds are available, which should result in more accurate information on catch (landings and discards) of target and non-target species, and fully account for discard mortality. In the short term, improved catch accounting is expected to reduce fishing effort and fishing mortality, which in the long term should allow for rebuilding of overfished stocks. In the longer-term analytical assessments should improve with better catch data. If the proposed coverage level target of 100 percent results in reduced groundfish fishing activity, then it may provide some minor short-term benefits to habitat. Over the long term, if 100-percent coverage contributes to higher catch limits, fishing effort could increase in the future, which could have negative impacts to habitat. The modifications in management measures may indirectly affect protected resources, but are not expected to have

substantial impacts on protected resources. This action is expected to have a range of potential socioeconomic impacts, depending on the availability of Federal funding for monitoring and the ultimate ASM coverage target. A target at-sea monitoring coverage rate of 100 percent will be in place, if sufficient Federal funds are available, which will result in relatively neutral impacts on operating costs compared to those under past and current coverage levels. However, if no Federal funding is available, the ASM coverage rate target would be 40 percent, which would increase fleet wide operating costs by an estimated \$2.09 million per year. Economic effects could be lower if any subsidy is available to offset the cost of monitoring, or depending on the number of vessels that use electronic monitoring (EM) in lieu of human at-sea monitoring. Initial costs of installing and purchasing EM equipment may be high which may have negative impacts in the short term, if not subsidized, but over the long term EM may be more cost effective than human at-sea monitors. EM is expected to be more cost effective for vessels who fish more in the groundfish fishery (*i.e.*, greater than 20 days per year). Based on the amount of available funds that have been allocated to reimburse sectors for monitoring as of 2021, there appears to be sufficient funds for at least 2 years of 100-percent monitoring starting in fishing year 2022. In addition, 100-percent at-sea monitoring coverage may be seen as overly burdensome by fishing communities. However, under 100-percent monitoring coverage the enforceability of the FMP and the risk of non-compliance both improve, which should improve the fairness and equitability of management measures. In the short term, economic impacts of 100-percent at-sea monitoring coverage on human communities would be reduced while Federal reimbursements for monitoring costs are available. Impacts over the long term will vary depending on whether Federal reimbursements of monitoring costs continue into the future.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The

IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of the IRFA, contained in the Environmental Impact Statement, is available from the Council (see **ADDRESSES**). A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. No relevant Federal rules duplicate, overlap, or conflict with this proposed rule. A summary of the analysis follows.

*Description of the Reasons Why Action by the Agency Is Being Considered and Statement of the Objectives of, and Legal Basis for, This Proposed Rule*

This action is taken under the authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

The primary purpose of this action is to improve accounting of landings and discards in the commercial groundfish fishery, while also taking into 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) among sectors, with each sector agreeing to a lease price prior to executing the trade. Catch that is discarded or landed without accounting would 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 were considered in Amendment 23.

*Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply*

This action would regulate all commercial fishing businesses issued a Federal limited access NE multispecies vessel permit and/or a NE multispecies dealer permit. As of June 1, 2020, NMFS had issued 828 commercial limited access groundfish permits associated with vessels and 148 permits associated with dealers. Therefore, 976 permits are regulated by this action. Each vessel or dealer may be individually owned or part of a larger corporate ownership

structure, and for RFA purposes, it is the ownership entity that ultimately would be regulated by the proposed action. Ownership entities are identified on June 1 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. Ownership data collected from vessel permit holders indicate that there are 667 distinct business entities that hold at least one vessel permit regulated by the proposed action. Of these, all are engaged primarily in commercial fishing, and 80 did not have any revenues (were inactive) in 2019. Of these distinct business entities, 661 are categorized as small entities and 6 are categorized as large entities, per the NMFS guidelines. Ownership data collected from dealer permit holders indicate 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.

*Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule*

The proposed action does not duplicate, overlap, or conflict with any other Federal rules.

*Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities*

The New England Fishery Management Council selected all alternatives that met the objectives of the action, and minimized costs, to provide regulated businesses the ability

to choose the monitoring options that best suit their operations while meeting the catch accounting requirements.

*Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of This Proposed Rule*

A description of the projected reporting, recordkeeping, and other compliance requirements of this proposed action, including an estimate of the classes of small entities that will be subject to the requirements is contained in the Notice of Information Collection published December 17, 2021 (86 FR 71624), and summarized below.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule revises, and renews, the existing requirements for the collection of information 0648–0605, titled “Northeast Multispecies Amendment 16.” These revisions are due to an increased monitoring and reporting burden from higher ASM coverage targets; additional reporting and data collection through voluntary options for sector monitoring tools (audit model EM and MREM); potential for increases or decreases in monitoring and reporting burden as a result of coverage level changes from funding provisions; and an additional VMS declaration required for vessels fishing on a trip exclusively west of 71°30' W longitude to be excluded from the ASM requirement.

In 2010, we implemented a new suite of regulations for the NE multispecies fishery through Amendment 16 to the NE Multispecies FMP. Amendment 16 required sectors to develop and fund an independent third-party ASM program. Amendment 16 allowed sectors to use EM instead of human monitors to meet ASM requirements, provided that the Greater Atlantic Regional Administrator deemed EM sufficient. Using the authority and process granted to it in Amendment 16, NMFS announced its determination that sectors may use EM to meet monitoring requirements (86 FR 16686; March 31, 2021). To implement this change, we are proposing to collect additional data elements necessary to support an EM program. Specifically, we propose to require the development and submission of VMPs and trip-level feedback reports, both of which are critical for accurate catch data and management of ACLs. We also propose to require the collection of information related to the purchase and installation of EM equipment. This is necessary for NMFS to reimburse industry's ASM

costs as directed and funded by Congressional appropriations.

We estimate 1,309 entities will be subject to the existing and new elements of the information collection. The estimated total annual burden hours are 73,198. The estimated total annual cost to the public is \$10,632,454 in recordkeeping and reporting costs. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimated time per response varies by item within the suite of information collected, as follows: Sector operations plan and membership list updates, 110 hours; monitoring service provider initial application, 10 hours; monitoring service provider response to application disapproval, 10 hours; data entry for sector discard monitoring system, 3 minutes; sector weekly catch report, 4 hours; sector annual report, 10 hours; notification of expulsion from a sector, 30 minutes; request to transfer sector annual catch entitlement, 5 minutes; request to lease DAS, 5 minutes; request to downgrade DAS baseline, 5 minutes; VMS area and DAS declaration, 5 minutes; VMS trip-level catch report; VMS daily catch reports when fishing in multiple broad stock areas, 15 minutes; daily VMS catch reports when fishing in the U.S./Canada Management Area and Closed Area II Special Access Programs, 15 minutes; daily VMS catch reports when fishing in the Regular B DAS Program, 15 minutes; pre-trip hail report, 2 minutes; trip-end hail report, 15 minutes; pre-trip notification system notification, 2 minutes; vessel notification of selection for ASM coverage, 5 minutes; at-sea monitor deployment report, 10 minutes; ASM and EM service provider catch report to NMFS upon request, 5 minutes; at-sea monitor or EM staff report of harassment, safety concerns, and other issues, 30 minutes; ASM and EM service provider contracts upon request, 30 minutes; ASM and EM service provider information materials upon request, 30 minutes; EM VMP development and submission, 2 hours; EM vessel feedback letters, 30 minutes; EM equipment installation, 16 hours; EM equipment purchase and installation reimbursement form, 30 minutes; Office of Law Enforcement debriefing of at-sea monitors and EM staff, 2 hours; ASM database and data entry requirements, 0 minutes; DAS Transfer Program, 5 minutes; submission of proposed special access programs, 20 hours; and

NAFO Reporting Requirements, 23 hours.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 14, 2022.

**Samuel D. Rauch, III**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended 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 the definition for “Electronic monitoring audit model”;
- c. Adding the definition for “Electronic monitoring maximized retention model”;
- d. Adding the definition for “Electronic monitoring provider staff”;
- e. Revising the definition for “Observer or monitor”;
- f. Removing the definition for “Observer/sea sampler”;
- g. Republishing in alphabetical order the definition of “Ocean quahog”.
- h. Revising the definition for “Slippage in the Atlantic herring fishery”;
- i. Revising the definition for “Slip(s) or slipping catch in the Atlantic herring fishery”; and

■ j. Revising the definition for “Video reviewer”.

The revisions and additions read as follows:

**§ 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 groundfish sector monitoring program, 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 are 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 authorized by NMFS to collect 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*.

\* \* \* \* \*

*Slippage in the Atlantic herring fishery* means discarded catch from a vessel issued an Atlantic herring permit that is carrying an observer or monitor prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by an observer or monitor after the catch is on board. Slippage also means any catch that is discarded during a trip prior to it being sampled portside by a portside sampler on a trip selected for portside sampling coverage by NMFS. Slippage includes releasing catch from a codend or seine prior to the completion of pumping the catch aboard and the release of catch from a codend or seine while the codend or seine is in the water. Fish that cannot be pumped and remain in the codend or seine at the end of pumping operations are not considered slippage. Discards that occur after the catch is brought on board and made available for sampling and inspection by an observer or monitor are also not considered slippage.

\* \* \* \* \*

*Slip(s) or slipping catch in the Atlantic herring fishery* means discarded catch from a vessel issued an Atlantic herring permit that is carrying an observer or monitor prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by an observer or monitor after the catch is on board. Slip(s) or slipping catch also means any catch that is discarded during a trip prior to it being sampled portside by a portside sampler on a trip selected for portside sampling coverage by NMFS. Slip(s) or slipping catch includes releasing fish from a codend or seine prior to the completion of pumping the fish on board and the release of fish from a codend or seine while the codend or seine is in the water. Slippage or slipped catch refers to fish that are slipped. Slippage or slipped catch does not include operational discards, discards that occur after the catch is brought on board and made available for sampling and inspection by an observer or monitor, or fish that inadvertently fall out of or off fishing gear as gear is being brought on board the vessel.

\* \* \* \* \*

*Video reviewer* means any electronic monitoring service provider staff

approved/certified or training to be approved/certified by NMFS for providing electronic monitoring video review services consistent with electronic monitoring program requirements.

\* \* \* \* \*

■ 3. Section 648.10 is amended by revising paragraph (f)(4)(i) to read as follows:

**§ 648.10 VMS and DAS requirements for vessel owners/operators.**

\* \* \* \* \*

(f) \* \* \*

(4) \* \* \*

(i) For trips greater than 24 hours, the owner or operator of a limited access or LAGC scallop vessel with an IFQ permit that fishes for, possesses, or retains scallops, and is not fishing under a NE Multispecies DAS or sector allocation, must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished, including open area trips, access area trips as described in § 648.59(b)(9), Northern Gulf of Maine RSA trips, and trips accompanied by an observer. The reports must be submitted for each day (beginning at 0000 hr and ending at 2400 hr) and not later than 0900 hr of the following day. Such reports must include the following information:

(A) VTR serial number;

(B) Date fish were caught;

(C) Total pounds of scallop meats kept; and

(D) Total pounds of all fish kept.

\* \* \* \* \*

■ 4. Section 648.11 is amended by:

■ a. Revising paragraphs (a), (b), (d), (h)(1), (h)(3)(vii), (h)(3)(ix) and (x), (h)(5)(i) through (iv), (h)(5)(vi) and (vii), (h)(7), (i)(1) and (2), (i)(3)(i), (i)(4)(ii), (i)(5) and (6);

■ b. Adding paragraph (i)(7); and

■ c. Revising paragraphs (j), (k)(4)(i) and (ii), (l), (m)(1)(i) and (v), (m)(2)(iii)(A), (m)(4)(i), (m)(6) introductory text, and (n)(2) introductory text.

The revisions and addition read as follows:

**§ 648.11 Monitoring coverage.**

(a) *Coverage.* The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, Atlantic surfclam, ocean quahog, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional

requirements specific in paragraph (g) of this section. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a fisheries observer when requested by the Regional Administrator in accordance with the requirements of this section. The requirements of this section do not apply to vessels with only a Federal private recreational tilefish permit.

(b) *Facilitating coverage.* If requested by the Regional Administrator or their designees, including observers, monitors, and NMFS staff, to be sampled by an observer or monitor, it is the responsibility of the vessel owner or vessel operator to arrange for and facilitate observer or monitor placement. Owners or operators of vessels selected for observer or monitor coverage must notify the appropriate monitoring service provider before commencing any fishing trip that may result in the harvest of resources of the respective fishery. Notification procedures will be specified in selection letters to vessel owners or permit holder letters.

\* \* \* \* \*

(d) *Vessel requirements associated with coverage.* An owner or operator of a vessel on which an observer or monitor is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer or monitor access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's or monitor's duties.

(3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the observer or monitor, and allow the observer or monitor access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Notify the observer or monitor in a timely fashion of when fishing operations are to begin and end.

(5) Allow for the embarking and debarking of the observer or monitor, as specified by the Regional Administrator, ensuring that transfers of observers or monitors at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the observers or monitors involved.

(6) Allow the observer or monitor free and unobstructed access to the vessel's

bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(7) Allow the observer or monitor to inspect and copy any the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

\* \* \* \* \*

(h) \* \* \*

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

\* \* \* \* \*

(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.

\* \* \* \* \*

(ix) The names of its fully equipped certified observers, monitors, or video reviewers on staff; or a list of its training candidates (with resumes) and a request for an appropriate NMFS-certified

Training class. All training classes have a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

following information must be submitted to NMFS at least 15 business days prior to the beginning of the proposed training: A list of observer or monitor candidates; candidate resumes, cover letters and academic transcripts; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. A medical report certified by a physician for each candidate is required 7 business days prior to the first day of training. CPR/First Aid certificates and a final list of training candidates with candidate contact information (email, phone, number, mailing address and emergency contact information) are due 7 business days prior to the first day of training. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS minimum eligibility standards for observers or monitors as described on the National Observer Program website: <https://www.fisheries.noaa.gov/topic/fishery-observers#become-an-observer>.

(vii) *Reports and Requirements.* (A) *Deployment reports.*

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

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

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

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

(D) *Debriefing.* Ensure that the observer, monitor, or electronic

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

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

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

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

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

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

program so that an exit interview may be arranged and gear returned.

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

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

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

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

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

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

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

(3) Vessel hail reports and landings records;

(4) Electronic monitoring data and reports; and

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

(M) *Data retention.* Ensure that electronic monitoring data and reports are retained for a minimum of 12 months after catch data are finalized for the fishing year. NMFS will notify

monitoring service providers of the catch data finalization date each year. The electronic monitoring service provider must provide NMFS access to electronic monitoring data or reports upon request.

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

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

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

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

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

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

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

(3) Access to video reviewers for debriefing sessions;

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

\* \* \* \* \*

(7) *Removal of monitoring service provider from the list of approved service providers.* A monitoring service provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved monitoring service providers. Such notification shall specify the reasons for the pending removal. A monitoring service provider that has received notification that it is subject to removal from the list of approved monitoring service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the

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

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

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer, monitor, or monitoring service provider.

(i) *Observer, monitor, or video reviewer certification.* (1) *Requirements.*

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

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

(3) \* \* \*

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

\* \* \* \* \*

(4) \* \* \*

(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.

(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 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 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.

(k) \* \* \*

(4) \* \* \*

(i) An owner of a scallop vessel required to carry an observer under paragraph (k)(3) of this section must arrange for carrying an observer that has passed a NMFS-certified Observer Training class certified by NMFS from an observer service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner,

operator, or manager within 18 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/FSB website: <https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs>. The observer service provider may take up to 48 hr to arrange for observer deployment for the specified scallop trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure an observer within 48 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS shall issue such a waiver within 24 hr, if the conditions of this paragraph (k)(4)(ii) are met. A vessel may not begin the trip without being issued a waiver.

\* \* \* \* \*

(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 (l)(2) of this section. All pre-trip notifications shall be issued a unique confirmation number. A vessel may not fish on a NE multispecies DAS or sector trip with an observer waiver confirmation number that does not match the vessel's trip plan that was called in to NMFS. Confirmation numbers and the vessel's observer or observer waiver status for pre-trip notification calls remain valid for 48 hr from the intended sail date. After a trip begins, that trip's confirmation number and observer or observer waiver status remains valid until the trip ends. If a trip is interrupted and the vessel returns to port due to bad weather or other circumstance beyond the operator's control, the vessel's observer or observer waiver status and confirmation number for the interrupted trip remains the same if the vessel departs within 48 hr from the vessel's return to port. If the layover time is greater than 48 hr, the vessel owner, operator, or manager must provide a new pre-trip notification. If an observer or at-sea monitor is assigned to a particular trip, a vessel may not leave port without the at-sea monitor on board, unless NMFS issues a waiver. If a vessel is using electronic monitoring to comply with the monitoring requirements of this part, it may not leave port without an operational



electronic monitoring system on board, unless NMFS issues a waiver, 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 (l)(5)(i) of this section.

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

(ii) *Gear-based exclusion from the at-sea monitoring program.* A sector vessel that notifies NMFS of its intent to exclusively fish using gillnets with a

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

(iii) *Geographic exclusion from the at-sea monitoring program.* Vessels fishing exclusively west of 71 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 § 648.11(c), NMFS may issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements for the following reasons.

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

(B) *Logistics waivers.* NMFS may issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements for

logistical and technical reasons, including, but not limited to: No monitor is available; the assigned observer is unable to make the trip; the trip will have no fishing effort; and electronic monitoring system technical problems.

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

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

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

(7) *Hail reports.* For the purposes of the monitoring requirements specified in paragraph (l)(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 § 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) of this section, the sector manager must first inform NMFS in writing in advance of the effective date of the change in approved monitoring service providers in conjunction with the submission of the next weekly sector catch report specified in § 648.87(b)(1)(v)(B). A sector may use more than one monitoring service provider at any time, provided any monitoring service provider employed by or contracted with a sector meets the standards specified in paragraph (b)(4) of this section.

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

(10) *Sector monitoring program operational standards.* In addition to the monitoring service provider standards specified in paragraph (h)(5) of this section, any at-sea/electronic monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (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 § 648.11, or as otherwise instructed by the Regional Administrator.

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

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

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

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

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

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

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

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

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

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

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

A copy must be submitted to NMFS upon request.

(D) *Safety hazards.* Completion by an at-sea monitor of a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (1)(10)(ii)(E), an at-sea monitor cannot be deployed on that vessel for that trip.

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

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

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

stock because such regulated species or ocean pout were caught while also operating under a NE multispecies DAS. However, for example, if a sector vessel is issued a limited access General Category Atlantic Sea Scallop permit and fishes for scallops under the provisions specific to that permit, any yellowtail flounder caught by the vessel on such trips would be deducted from the appropriate non-groundfish component, such as the other sub-component or the appropriate yellowtail flounder stock's ACL specified for the Atlantic Sea Scallop fishery and not from the yellowtail flounder ACE for the sector.

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

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

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

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

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

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

(1) Offload from vessels participating in the maximized retention monitoring program all fish below the minimum size specified at § 648.83 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) Clearly identify, mark, or label all containers with fish below the minimum size specified in § 648.83 as containing undersized fish, the fishing vessel from which they were offloaded, and the date of offloading.

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

(v) *Adjustment to operational standards.* The at-sea/electronic monitoring operational standards specified in paragraph (1)(10) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(m) \* \* \*

(1) \* \* \*

(i) In addition to the requirement for any vessel holding an Atlantic herring permit to carry an observer described in paragraph (a) of this section, vessels issued a Category A or B Herring Permit are subject to industry-funded monitoring (IFM) requirements on declared Atlantic herring trips, unless the vessel is carrying an observer to fulfill Standard Bycatch Reporting Methodology requirements. An owner of a midwater trawl vessel, required to carry an observer when fishing in Northeast Multispecies Closed Areas at § 648.202(b), may purchase an IFM high volume fisheries (HVF) observer to access Closed Areas on a trip-by-trip basis. General requirements for IFM programs in New England Council FMPs are specified in paragraph (g) of this section. Possible IFM monitoring for the Atlantic herring fishery includes observers, at-sea monitors, and electronic monitoring and portside samplers, as defined in § 648.2.

\* \* \* \* \*

(v) To provide the required IFM coverage aboard declared Atlantic herring trips, observers and monitors must hold a high volume fisheries certification from NMFS.

(2) \* \* \*

(iii) \* \* \*

(A) For IFM observer coverage aboard vessels fishing with midwater trawl gear to access the Northeast Multispecies Closed Areas, consistent with requirements at § 648.202(b), at any point during the trip;

\* \* \* \* \*

(4) \* \* \*

(i) An owner of an Atlantic herring vessel required to have monitoring under paragraph (m)(3) of this section

must arrange for monitoring by an observer from a monitoring service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected for monitoring must contact a monitoring service provider prior to the beginning of the trip and the monitoring service provider will notify the vessel owner, operator, or manager whether monitoring is available. A list of approved monitoring service providers shall be posted on the NMFS website: <https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs>.

(6) *Sampling requirements for observers and monitors.* In addition to the requirements at § 648.11(d)(1) through (7), an owner or operator of a vessel issued a limited access herring permit on which an observer or monitor is embarked must provide observers or monitors:

(n) *Sampling requirements for limited access Atlantic mackerel and longfin squid/butterfish moratorium permit holders.* In addition to the requirements in paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a limited access Atlantic mackerel or longfin squid/butterfish moratorium permit on which an observer is embarked must provide observers:

- 5. Section 648.14 is amended by:
  - a. Revising paragraphs (a)(7), (e), and (i)(1)(ix)(B);
  - b. Adding paragraph (k)(2)(vii); and
  - c. Revising paragraphs (k)(3), (k)(14)(ix) through (xiii), and (r)(2)(v).

The revisions and addition read as follows:

**§ 648.14 Prohibitions.**

(a) (7) Possess, import, export, transfer, land, or have custody or control of any species of fish regulated pursuant to this part that do not meet the minimum size provisions in this part, unless such species were harvested exclusively within state waters by a vessel that does not hold a valid permit under this part, or are species included in the NE Multispecies Fishery Management Plan that were either harvested by a vessel participating in the maximized retention electronic monitoring program consistent with § 648.11(l)(10)(i)(E) or harvested by a vessel issued a valid High Seas Fishing Compliance permit that fished exclusively in the NAFO Regulatory Area.

(e) *Observer program.* It is unlawful for any person to do any of the following:

(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.

(4) Submit false or inaccurate data, statements, or reports.

(B) Fail to provide information, notification, accommodations, access, or reasonable assistance to an observer conducting his or her duties aboard a vessel, as specified in § 648.11.

- (i) \* \* \*
- (1) \* \* \*
- (ix) \* \* \*

(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) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any NE multispecies harvested from the EEZ by a vessel issued a Federal NE multispecies permit, unless the transferee has a valid NE multispecies dealer permit.

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

(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.

\* \* \* \* \*

(r) \* \* \*

(2) \* \* \*

(v) Fish with midwater trawl gear in any Northeast Multispecies Closed Area, as defined in § 648.81(a)(3) through (5) and (c)(3) and (4), without an observer on board, if the vessel has been issued an Atlantic herring permit.

\* \* \* \* \*

■ 6. Section 648.51 is amended by revising paragraphs (c)(4) and (e)(3)(iii) to read as follows:

§ 648.51 Gear and crew restrictions.

\* \* \* \* \*

(c) \* \* \*

(4) An at-sea observer is on board, as required by § 648.11(k).

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(iii) An at-sea observer is on board, as required by § 648.11(k).

\* \* \* \* \*

■ 7. Section 648.80 is amended by revising paragraphs (d)(3) and (e)(2)(ii) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

\* \* \* \* \*

(d) \* \* \*

(3) The vessel carries an observer, if requested by the Regional Administrator;

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) The vessel carries an observer, if requested by the Regional Administrator;

\* \* \* \* \*

■ 8. Section 648.83 is amended by revising paragraph (a)(1) to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(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

Table with 2 columns: Species and Size in inches. Rows include Cod, Haddock, Pollock, Witch flounder, Yellowtail flounder, American plaice, Atlantic halibut, Winter flounder, and Redfish.

\* \* \* \* \*

■ 9. Section 648.85 is amended by revising paragraph (e)(1)(viii)(C) to 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(l), including landings of allocated stocks below the minimum size at § 648.83(a)(1), will be counted as landings and not discards.

(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(l) 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)(1) 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)(1) 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)(1) 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)(1) 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)(1) 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)(1) 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.

\* \* \* \* \*

■ 10. Section 648.86 is amended by revising the introductory text and paragraph (a)(3)(ii)(A)(1) to read as follows:

**§ 648.86 NE Multispecies possession restrictions.**

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

- (a) \* \* \*
- (3) \* \* \*
- (ii) \* \* \*
- (A) \* \* \*

(1) *Haddock incidental catch cap.*

When the Regional Administrator has determined that the incidental catch allowance for a given haddock stock, as specified in § 648.90(a)(4)(iii)(D), has been caught, no vessel issued an Atlantic herring permit and fishing with midwater trawl gear in the applicable stock area, *i.e.*, the Herring GOM Haddock Accountability Measure (AM) Area or Herring GB Haddock AM Area, as defined in paragraphs (a)(3)(ii)(A)(2) and (3) of this section, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from that area, unless all herring possessed and landed by the vessel were caught outside the applicable AM Area and the vessel's gear is stowed and not available for immediate use as defined in § 648.2 while transiting the AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued a Category A or B Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a NE multispecies permit and is operating on a declared (consistent with § 648.10(g)) NE multispecies trip. In making this determination, the Regional Administrator shall use haddock catches observed by observers or monitors by herring vessel trips using midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), expanded to an estimate of total haddock catch for all such trips in a given haddock stock area.

\* \* \* \* \*

■ 11. Section 648.87 is amended by:

- a. Revising paragraph (b)(1) introductory text, and (b)(1)(v) through (viii);

- b. Removing paragraph (b)(1)(ix);
- c. Revising paragraph (b)(2) and (3); and
- d. Removing paragraphs (b)(4) and (5).  
The revisions read as follows:

**§ 648.87 Sector allocation.**

\* \* \* \* \*

(b) \* \* \*

(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 (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 § 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.

\* \* \* \* \*

■ 12. In § 648.90, revise paragraphs (a)(2)(iii) and (4)(i)(B) to read as follows:

**§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.**

\* \* \* \* \*

(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; and

(S) Any other measures currently included in the FMP.

\* \* \* \* \*

(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.

\* \* \* \* \*

■ 13. Section 648.202 is amended by revising paragraph (b)(1) to read as follows:

**§ 648.202 Season and area restrictions.**

\* \* \* \* \*

(b) \* \* \*

(1) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, may fish for, possess or land fish in or from the Closed Areas, including Cashes Ledge Closure Area, Western GOM Closure Area, Closed Area I North (February 1–April 15), and Closed Area II, as defined in § 648.81(a)(3), (4), and (5) and (c)(3) and (4), respectively, unless it has declared first its intent to fish in the Closed Areas as required by § 648.11(m)(1), and is carrying onboard an observer.

\* \* \* \* \*