

Draft
March 26, 2010

Draft Scallop Incidental Catch Sector Provisions

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Notes:

1. Based on Amendment 16 sector provisions.
2. Staff suggests the committee discuss text enclosed in a box.

1.1.1 Scallop Incidental Catch Sector Provisions

The management measures proposed in this section describe the process for establishing sector allocations in the scallop fishery for the specific purpose of acquiring groundfish that are caught incidental to scallop fishing. These provisions do not modify the existing LAGC IFQ sector provisions.

A sector allocation system apportions part or all of fishery resources (denominated in terms of catch) to various industry sectors. While vessels might be assigned to sectors based on factors such as gear used, permit category, vessel size, homeport, area fished, etc., this measure allows vessels to form sectors of their own choosing. Such self-selected sectors might be based on common fishing practices, vessel characteristics, community organization, or marketing arrangements, but this would not be required. Since self-selection of sector membership would not necessarily be based on any common vessel or gear characteristics this alternative offers a great deal of flexibility in the formation of sectors. A group of permit holders would agree to form a sector and submit a binding plan for management of that sector's allocation of catch or effort. Allocations to each sector are based on catch (hard TACs).

1.1.1.1 Scallop Sector Objectives

The objectives for the Scallop Incidental Catch Sectors (SICS) are:

- To provide a means for groups of scallop vessels to acquire allocations of groundfish stocks that are caught while scallop fishing. This is intended to promote a market-based allocation of these stocks between the two fisheries.
- To more closely link catches of groundfish species while scallop fishing to groups of scallop vessels. This is intended to make these vessels more accountable for their catches of groundfish stocks and to provide an incentive to reduce incidental groundfish catches.
- To give scallop fishing vessel operators more control over fishing opportunities that may be limited by incidental catches of groundfish.

1.1.1.2 Sector Definition/Formation of a Sector

This section clarifies the definition of a sector and sector formation and makes scallop sectors consistent with the Council's sector policies.

SEE "FORMATION OF SECTORS" IN ISSUES PAPER

A sector means a group of persons (three or more persons, none of whom have an ownership interest in at least two other two persons in the sector) holding limited access vessel permits (including LAGC permits) who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) in order to achieve objectives consistent with applicable FMP goals and objectives. In the formation of a sector, sector participants can select who may participate. Only vessels with a limited access scallop permit are eligible to join a scallop sector.

Confirmation of permit history (CPH) permits do not need to be activated in order to be associated with/join a sector.

Participation in a self-selecting sector will be voluntary. Vessels that did not decide to join a sector will remain in a *common pool* which will fish under the constraints imposed by the Council. Individuals that wished to form a sector will be required to submit a proposal for formation of a sector and a legally-binding plan of operations which would require approval from the Regional Administrator (see below). These will be agreed upon and signed by all members of the sector.

Rationale:

1.1.1.3 Preparation of a Sector Formation Proposal and Operations Plan

There are two steps for the formation of a scallop sector. First, the sector proponents must request that the Council submit a management action (a framework action of amendment) authorizing the specific sector. Second, once the Council authorizes the sector, the sector must submit required documents to NMFS. Details for each step are provided below.

1.1.1.3.1 Request to Council to Authorize Sector

No later than one year prior to when a sector wishes to begin fishing operations, the sector must submit a request for authorization to the Council. The Council will consider this request and will schedule a management action for its adoption. The request to authorize a sector will be considered along with other Council priorities and there is no guarantee that Council will act in time to meet the desired starting date. Once a sector is authorized by the Council through a management action, a sector does not need to submit a request to the Council to operate in subsequent years unless the sector wants to change its core elements.

The request to the Council must include the following:

- A ***preliminary operations plan***. The operations plan is a document that describes the goals, organization, and intended operations of the sector. The preliminary operations plan submitted to the Council should provide enough detail so that the Council understands the goals and objectives of the proposed sector, its approximate size, its general operating area, and how it intends to operate. This plan will serve as the basis for the description of the sector that is incorporated into the implementing management action; as a result, sector proponents should ensure that the plan accurately reflects the core elements that describe the sector and the way it will operate.
- A ***draft NEPA document***. This document should provide enough detail that it can be used to assist the Council in drafting the management action that authorizes the sector.

1.1.1.3.2 Sector Submission to NMFS

Once the Council authorizes a sector – or, in the case of a new request, once the Council begins the management action that will authorize a sector – the sector proponents must submit additional documents to NMFS. The deadline for submission of these documents is eight months prior to the fishing year the sector intends to operate (unless NMFS authorizes a later submission). For a fishing year beginning March 1, submissions must be received by NMFS no later than July 1. Submissions can be written to cover a multi-year period, but changes in sector membership or

operations may require submission of a new operations plan and NEPA document on a more frequent basis. Submission documents required include:

- ***A final operations plan.*** This final operations plan should include the following details:
 - A list of all participants and a contract signed by all participants indicating their agreement to abide by the operations plan accompanying the proposal.
 - A list of all vessels that would be part of the sector including an indication for each vessel of whether it would continue to fish;
 - The original distribution of catch history or TACs;
 - A detailed plan for consolidation of TACs or DAS, if any is desired, including a detailing of the quantity and duration of any redistribution of TAC or DAS within the sector;
 - A plan and analysis to show how the sector will avoid exceeding their allocated TACs (or target TACs if the allocation is in terms of DAS). This plan should include provisions for monitoring and enforcement of the sector regulations, including documentation of both landings and discards;
 - Rules for entry and exit to the sector (see more on this in next section) including procedures for removing or disciplining members of the sector who do not abide by its rules. Rules for entry and exit must also define how catch or DAS history that is developed by vessels participating in a sector is assigned to each vessel;
 - Procedure for notifying NMFS if a member is expelled from the sector for violation of sector regulations.
 - Detailed information about overage penalties or other actions to be taken if the sector exceeds its ACE. An ACE overage means the catches by a sector's vessels exceed the ACE possessed by the sector after considering all ACE transfers that take place for the current fishing year (including those that occur up to two weeks into the following fishing year, as allowed by the ACE transfer provisions, see section 4.2.3.7);
 - Detailed information about the sector's *independent third-party weighmaster system* that is satisfactory to NMFS for monitoring landings and utilization of ACE;
 - Detailed information about a monitoring program for discards (see additional discussion of monitoring discards in Section 4.2.3.5).
 - A list of all Federal and State permits held by vessels participating in the sector, as well as a requirement to notify NMFS if a member is expelled;
 - A list of specific ports where members will land fish; specific exceptions should be noted (e.g., safety, weather) and allowed, provided there is reasonable notification of a deviation from the listed ports; this requirement is in addition to the requirement for detailed information about the sector's independent third-party weighmaster system.
 - TAC thresholds and details regarding the sector's plans for notifying NMFS once the specified TAC threshold has been reached.

- Identify potential redirection of effort as a result of sector operations, and if necessary propose limitations to eliminate adverse effects of any redirection of effort.
- An *appropriate NEPA document* assessing the impacts of forming the sector must be prepared. This will be written by the sector applicants, and submitted to NMFS through the Council. Any changes in fishery regulations or fishing practices that may result on the basis of sector-based management will be addressed in the regulations that implement a particular sector, and in the EIS or EA corresponding to the creation or continuation of that sector. Such NEPA documents prepared by the sectors (an EA or EIS) will be tiered from the Amendment XX EIS. NMFS Northeast Region NEPA staff developed specific guidance for sectors on the preparation of EAs. They are providing assistance to sector leadership in writing documents and developing sector plans that meet the relevant requirements of the law.

The sector operations plan must be reviewed and approval given before the sector can operate. NMFS will consult with the Council and will solicit public comment on the operations plan consistent with the Administrative Procedure Act (APA). Upon review of the public comments, the Regional Administrator may approve or disapprove sector operations, through a final determination consistent with the APA.

Rationale:

1.1.1.4 Allocation of Resources

SEE "ALLOCATION OF RESOURCES" IN ISSUE PAPER

Rationale:

1.1.1.5 Mortality/Conservation Controls

SEE "MORTALITY/CONSERVATION CONTROLS" IN ISSUE PAPER

(Following discussion is an example from Amendment 16 and will be revised after Committee meeting)

This action proposes additional details on the mortality and conservation controls required of sectors. Sectors are required to ensure that ACEs are not exceeded during the fishing year. Sectors should project when its ACE will be exceeded and should cease fishing operations prior to exceeding it. If the sector's ACE for a stock is exceeded, the sector must cease operations in that stock area until it can acquire additional ACE through a transfer to balance the catch, and the sector also must comply with other overage penalties that may be applicable.

It will be necessary to establish appropriate restrictions on catch or effort for each sector to ensure that they do not exceed their ACE (through landings or discards). Hard annual TACs by species will be allocated to the sector as a whole. The sector will be required to submit an Operations Plan for approval by the Regional Administrator. The Operations Plan should detail the allocation of ACE within the group, how the catch of the sector would be monitored, and a plan for

operations or stopping once the ACEs of one or more species are taken. TAC thresholds and details regarding the sector's plans for notifying NMFS once the specified TAC threshold has been reached also must be part of the operations plan. The plan must provide assurance that the sector would not exceed the ACEs allocated to it (either through landings or discards). See Section 4.2.3.1 for specific requirements of the sector Operations Plan.

A sector is expected to monitor catch and stop fishing in the appropriate stock areas before ACE available to the sector is exceeded. In the event a sector exceeds its ACE in spite of this requirement, sector vessels must stop fishing in the applicable stock area. Sector vessels may resume fishing in the stock area if additional ACE is acquired that supports additional fishing activity.

As discussed above, a sector's operations plan must show how the sector plans to avoid exceeding its ACE and must identify overage penalties and actions to be taken should the ACE be exceeded. In cases where a sector exceeds its ACE, overages will be paid back in pounds, on a pound per pound basis. An ACE overage means the catches by a sector's vessels exceed the ACE possessed by the sector after considering all ACE transfers that take place for the current fishing year (including those that occur up to two weeks into the following fishing year, as allowed by the ACE transfer provisions, see section 4.2.3.7).

1.1.1.5.1 Guidance on Sector Overages

To be clear, in the subsequent discussion the term "sector overage" means exceeding a TAC in year one after any ACE transfers have occurred with the result that the sector will receive a deduction of ACE in year two.

This action addresses the treatment of overages should a sector a sector member leave the sector the year following an overage or if the sector completely disbands following an overage.

- In the first situation, a vessel (or small number of vessels) leaves the sector but the remaining vessels have enough ACE to cover the overage deduction. Any impacts on departing members be specified and addressed by the sector operations plan and sector contract rather than by regulation. This provides the most flexibility and can be done through indemnification provisions and other legal constructs. Existing sectors have already incorporated provisions that address this situation (such as limiting fishing activity by the vessel if it leaves the sector the year after the overage). It also simplifies administration for NMFS.

- In the second, a sector disbands completely and no sector exists to cover the overage deduction, or there is insufficient ACE in year two to cover the year one overage. In this case, in order to account for the overharvested fish, individual permit holders are held responsible for reducing their catch the appropriate amount in the subsequent fishing year (rather than the sector, since it no longer exists). The deduction follows the individual permits. If an individual permit joins another sector, the overage penalty follows that permit into the other sector. Each permit is responsible for part of the overage penalty, calculated as simply the overage penalty divided by the number of vessels. If a permit does not join a sector the permit receives a DAS penalty. Each permit receives a percentage reduction in DAS equal to the maximum percentage overage of the sector. Example; the sector goes 5% over on stock A and 10% on stock B each permit receives a 10% DAS reduction.

Rationale: This section specifies how exit of vessels from the sector affects the overage provision.

1.1.1.6 Monitoring and Enforcement

SEE “MONITORING AND ENFORCEMENT” IN ISSUES PAPER

Amendment 13 adopted the concept that sectors are responsible for monitoring sector catch and enforcing sector provisions but provided few details for that requirement. This section addresses those requirements and organizes requirements from several sections of Amendment 13 into one location.

1.1.1.6.1 Revised Monitoring and Enforcement Provisions - General

It will be the responsibility of each sector to enforce any provisions adopted through procedures established in the operations plan and agreed to through the sector contract. Ultimately, a sector may desire to expel a member due to repeated violations of sector provisions. Once a vessel enters into a sector, it cannot fish during that fishing year under the regulations that apply to the common pool. In other words, if a vessel is expelled from a sector, it cannot participate in the scallop fishery during the remainder of that fishing year.

For the purposes of enforcement, a sector is a legal entity that can be subject to NMFS enforcement action for violations of the regulations pertaining to sectors. Vessels operating within a sector are responsible for judgments against the sector.

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

As previously noted, the determination that a sector has exceeded the ACE for a stock and is subject to an overage penalty is made after considering all transfers. The ability to balance catches and ACE through transfers does not excuse a sector from the requirements to adequately monitor catch and stop fishing when it is projected that an ACE will be harvested. Repeated instances of exceeding ACE may be evidence of inadequate monitoring systems, poor compliance with an operations plan, or a failure to adhere to other regulatory requirements. A sector may be subject to administrative or enforcement action for these shortfalls, even if the sector is able to complete ACE transfers so that an ACE overage does not exist.

As required by section 4.2.3.2, sectors must notify NMFS if a member is ejected from the sector.

The next two sections describe the requirements necessary for monitoring both landings and discards. These sections add additional requirements to those currently in place (such as weighmasters/dockside monitors for all landings, improved discard monitoring systems, etc.). The range of alternative considered by the Council includes the current system (No Action, see above) as well as the system proposed below.

1.1.1.6.2 Enforcement

It will be the responsibility of each sector to enforce any provisions adopted through procedures established in the operations plan and agreed to through the sector contract. Ultimately, a sector may desire to expel a member due to repeated violations of sector provisions. Once a vessel

enters into a sector, it cannot fish during that fishing year under the regulations that apply to the common pool. In other words, if a vessel is expelled from a sector, it cannot participate in the scallop fishery during the remainder of that fishing year.

For the purposes of enforcement, a sector is a legal entity that can be subject to NMFS enforcement action for violations of the regulations pertaining to sectors. Vessels operating within a sector are responsible for judgments against the sector. The following options are adopted to further explain this concept. These provisions are in addition to other sector requirements currently in place or adopted through this action.

Sectors may be held jointly liable for violations of the following sector operations plan requirements:

- ACE overages
- Discarding of legal-sized fish
- Misreporting of catch (landings or discards)

Rationale: This change limits the elements of the operations plan for which sectors are subject to joint and several liability.

Should a hard TAC allocated to a sector be exceeded in a given fishing year, the sector's allocation will be reduced by the overage in the following fishing year, and the sector, each vessel, and vessel operator and/or vessel owner participating in the sector may be charged, as a result of said overages, jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR Part 904. If the sector exceeds its TAC in more than one (1) fishing year, the sector's share may be permanently reduced or the sector's authorization to operate may be withdrawn.

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

1.1.1.6.3 Sector Monitoring Requirements

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

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

Monitoring of Landings and Discards

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

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

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

The industry will be responsible for the development of and costs associated with a program, including an observer program that will satisfy the monitoring rules. Such a program should include the use of an independent private contractor(s) to coordinate roving and dockside monitor deployment, summarize trips validated by dealer reports, oversee the use of electronic monitoring equipment, and review data associated with the program. Either the contractor or sector manager should maintain a database of VTR, dealer, observer, and electronic monitoring reports. In addition, that entity should determine all species landings by stock and statistical areas, apply discard estimates to landings, deduct catch from sector TACs, and submit weekly reports detailing status, catch, and discards, including compliance concerns to the sector and NMFS. Any sector monitoring program will not replace the current VTR and dealer reporting requirements of the existing law nor any additional reporting requirements proposed in this Amendment.

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

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

Observer Program. In the event a NMFS observer and a third party observer or at-sea monitor are assigned to the same trip, the NMFS observer will take precedence and the third party observer or at-sea monitor will stand down. Observers or at-sea monitors will be required to submit reports on catch, discard, and other data elements to NMFS and/or the sector manager and/or the monitoring contractor.

For dockside monitoring, the required coverage will be random dockside monitoring of 20% of trips in each sector.

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

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

- Discards will not be counted when determining the sector's ACE/permit PSCs but will be counted against the ACE during the fishing year. Any discard mortality rate used in the most recent assessment will be used to calculate the discard mortality that is counted against ACE. When data is available from an adequate at-sea monitoring program (such as a federal observer program, a sector provided program, or other program that NMFS determines is adequate), in-season discard rates will be determined using a procedure specified by NMFS.
- A sector must develop an adequate monitoring system and demonstrate to NMFS that discards can be accurately monitored and counted as part of the ACE, at the sector's expense, by FY 2012. Details about such a monitoring system must be provided in the sector's operations plan. This system will enable the sector to deduct annual discards from the ACE instead of using assumed discard rates.
- Discard rates used if data from an adequate at-sea monitoring program is not available will be determined using a sector-specific discard rate. A sector-specific discard rate will be calculated for each stock and gear based on observer data from the previous year. If NMFS determines there are insufficient data to estimate discard rates at this fine of a scale, the fleet-wide stock and gear discard rate would be used for those sector-gear combinations. When calculating discard rates, regulatory discards of legal-sized fish caused by trip limits will be excluded.
- Discards will be counted at the previous assumed discard rate, calculated as often as is practicable, by gear. The calculated discard rate will be used to add a discard estimate to each landing by sector vessels so that total catch can be determined for each trip.
- If a trip is observed, the discards reported by the observer or at-sea monitor on that trip will be counted as the discards for that trip. Unobserved trips will use a discard estimate calculated from the observed trips.

Other requirements of sector monitoring plans may be implemented as directed by the Regional Administrator. The exact details of sector monitoring plans will be included in the sector's

operations plan, and NMFS will approve the monitoring plan as part of the review of the operations plan.

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

1.1.1.6.4 Standards for Sector Monitoring and Reporting Service Providers

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

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

- Identification of corporate structure, including the names and duties of controlling interests in the company such as owners, board members, authorized agents, and staff; and articles of incorporation, or a partnership agreement, as appropriate.
- Contact information for official correspondence and communication with any other office
- A statement, signed under penalty of perjury, from each owner, board member, and officer that they are free from a conflict of interest with fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and will not accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from such parties.

- A statement, signed under penalty of perjury, from each owner, board member, and officer describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.
- A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.
- A description of the applicant's ability to carry out the responsibilities and duties of a sector monitoring/reporting service provider and the arrangements to be used, including whether the service provider is able to offer dockside and/or at-sea monitoring services.
- Evidence of adequate insurance to cover injury, liability, and accidental death for dockside, roving, and at-sea monitors (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the dockside, roving, and at-sea monitors; vessel owner; and service provider. Service providers shall provide copies of the insurance policies to dockside, roving, and at-sea monitors to display to the vessel owner, operator, or vessel manager, when requested.
- Service providers shall provide benefits and personnel services in accordance with the terms of each monitor's contract or employment status.
- Proof that the service provider's dockside, roving, and at-sea monitors have passed an adequate training course that is consistent with the curriculum used in the current NEFOP training course, unless otherwise specified by NMFS.
- An Emergency Action Plan (EAP) describing the provider's response to an emergency with a dockside, roving, and at-sea monitors, including, but not limited to, personal injury, death, harassment, or intimidation.
- Evidence that the company is in good financial standing.

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

- A comprehensive plan to deploy NMFS-certified dockside, roving, and/or at-sea monitors, or other at-sea monitoring mechanism, such as electronic monitoring equipment that is approved by NMFS, according to a prescribed coverage level (or level of precision for catch estimation), as specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, including the following requirements:
 - A service provider must be available to industry 24 hours per day, 7 days per week, with the telephone system monitored a minimum of four times daily to ensure rapid response to industry requests.
 - A service provider must be able to deploy dockside, roving, and/or at-sea monitors, or other approved at-sea monitoring mechanism to all ports in which service is required by this section, or a subset of ports as part of a contract with a particular sector.
 - A service provider must report dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanism deployments to NMFS and the sector manager in a timely manner to determine whether the predetermined coverage levels are being achieved for the appropriate sector.
 - A service provider must assign dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanisms in a fair and equitable manner without regard to any preference by the sector manager or representatives of vessels other

than when the service is needed and the availability of approved/certified monitors and other at-sea monitoring mechanisms.

- A service provider's dockside, roving, and at-sea monitor assignment must be representative of fishing activities within each sector and must be able to monitor fishing activity throughout the fishing year.
- For service providers offering catch estimation or at-sea monitoring services, a service provider must be able to determine an estimate of discards for each trip, and provide such information to the sector manager and NMFS, as appropriate and required by this section.
- The service provider must ensure that dockside, roving, and at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload.
- The service provider must report possible dockside, roving, and at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding dockside, roving, or at-sea monitor conflict of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS.
- Service providers must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (i.e., sectors and participating vessels) and between the service provider and specific dockside, roving, or at-sea monitors.
- Service providers must submit to NMFS, if requested, copies of any information developed and used by the service providers distributed to vessels, such as informational pamphlets, payment notification, description of duties, etc.
- A service provider may refuse to deploy a dockside, roving, or at-sea monitor or other approved at-sea monitoring mechanism on a requesting fishing vessel for any reason including, but not limited to, the following:
 - If the service provider does not have an available dockside/roving monitor prior to a vessel's intended date/time of landing, or if the service provider does not have an available at-sea monitor or other at-sea monitoring mechanism approved by NMFS within the advanced notice requirements established by the service provider.
 - If the service provider is not given adequate notice of vessel departure or landing from the sector manager or participating vessels, as specified by the service provider.
 - If the service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at § 600.746.
 - For any other reason, including failure to pay for previous deployments of dockside, roving, or at-sea monitors other approved at-sea monitoring mechanism.
- A service provider must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of service providers. This does not apply to corporations providing reporting, dockside, and/or at-sea monitoring services to participants of another fishery managed under Federal regulations.

- A system to record, retain, and distribute the following information to NMFS, as requested, for a period specified by NMFS:
 - Dockside, roving, and/or at-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals
 - Incident/non-compliance reports (e.g., failure to offload catch)
 - Hail reports, landings records, and other associated communications with vessels
- A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act.
- A service provider must be able to supply dockside and at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.

Standards for Approval/Certification of Individual Dockside/Roving Monitors

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

- A high school diploma or legal equivalent.
- Successful completion of all NMFS-required training and briefings before deployment.
- Physical capacity for carrying out the responsibilities of a dockside/roving monitor pursuant to standards established by NMFS such as being certified by a physician to be physically fit to work as a dockside/roving monitor. The physician must understand the monitor's job and working conditions, including the possibility that a monitor may be required to climb a ladder to inspect fish holds and/or trucks.
- Absence of fisheries-related convictions based upon a thorough background check
- Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions to prevent conflicts of interest

Standards for Approval/Certification of Individual At-Sea Monitors

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

- A high school diploma or legal equivalent.
- Successful completion of all NMFS-required training and briefings before deployment
- Physical and mental capacity for carrying out the responsibilities of an at-sea monitor on board fishing vessels, pursuant to standards established by NMFS such as being certified by a physician to be physically fit to work as an at-sea monitor. The physician must understand the monitor's job and working conditions. Physical considerations include, but are not limited to the following:
 - Susceptibility to chronic motion sickness;
 - Ability to live in confined quarters;
 - Ability to tolerate stress;
 - Ability to lift and carry heavy objects up to 50 pounds;
 - Ability to drag heavy objects up to 200 pounds; and
 - Ability to climb a ladder.
- A current Red Cross (or equivalent) CPR/first aid certification.
- Absence of fisheries-related convictions based upon a thorough background check
- Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions to prevent conflicts of interest

1.1.1.7 Sector Annual Report Requirements

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

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

Rationale: This measure clarifies the information that should be reported in annual reports so that sectors can be evaluated.

1.1.1.8 Transfer of Annual Catch Entitlements (ACE)

Scallop Incidental Groundfish Catch Sectors can transfer ACE with Northeast Multispecies sectors. ACE can be acquired by a scallop sector for any groundfish stock that has a scallop fishery sub-ACL. Once a scallop sector acquires groundfish ACE, it can transfer that ACE to another scallop or groundfish sector. The exchange of ACE between two sectors is viewed as a private business arrangement. Sectors can seek compensation (monetary or otherwise) when transferring ACE to another sector. Sectors are not obligated to transfer unused ACE to a sector that needs additional ACE. There are no restrictions on the nature of the transfer of ACE between sectors. All or a portion of a sector's ACE of any stock can be transferred to another sector. This exchange can occur at any time during the fishing year and up to two weeks into the following fishing year. The transfer does not become effective until it is approved by NMFS.

Proposed ACE transfers will be referred to NMFS and will include data on the transfer specified by the Regional Administrator. The transfer is not considered authorized until NMFS notifies both sectors. The NMFS review of a transfer request will be based on general issues such as whether both sectors are complying with reporting or other administrative requirements. The responsibility for ensuring that sufficient ACE is available to cover the transfer is the responsibility of the sector manager. NMFS approval of a transfer does not absolve the sector from this responsibility.

Transfers of previous year's ACE after the end of the fishing year will allow sectors to balance accidental overages if other sectors hold unused ACE at the end of the year and are willing to transfer that ACE to the sector with an overage. Should a sector be unable to acquire ACE from another sector to balance an overage, the overage will be deducted from the next year's ACE allocation, and the sector may be subject to other penalties. Since ACE transfers may take place after fishing has commenced and it will not be clear whether sectors are able to balance overages by acquiring ACE until all transfers have been processed, 20% of each sector's ACE allocation for each stock will be held in reserve by NMFS until 61 days after the beginning of the fishing year to ensure that sectors will have sufficient ACE to balance overages from the previous year.

If a Scallop Incidental Groundfish Catch Sector acquires ACE from a groundfish sector, and does not catch all of this ACE during the fishing year, it can carry-over up unused ACE into the next fishing year. The limit on carry-over is ten percent of the ACE acquired.

During the fishing year, a sector should project when its ACE will be exceeded and should cease fishing operations prior to exceeding it. If the sector's ACE is exceeded, the sector must cease operations in that stock area until it can acquire additional ACE through a transfer to balance the catch, and the sector also must comply with other overage penalties that may be applicable. A sector can resume fishing in the stock area if it acquires more ACE.

Rationale: Allowing transfer of ACE provides flexibility for sectors to adjust their allocations to account for unusual circumstances or to take advantage of other opportunities. For example, there may be instances where a sector does not have an allocation for a stock that has an unusual distribution due to oceanographic conditions – without allowing ACE transfer, the sector may be forced to discard this stock and may have to cease fishing because of the discards. Allowing the exchanges to continue for a period after the end of the fishing year provides a limited opportunity for a sector to quota balance in the instances that the ACE was inadvertently exceeded. This provision is not intended to allow sectors to exceed their ACE.

1.1.1.9 Interaction of Sector with Common Pool Vessels

This section modifies the provisions that relate to the interaction between sector and non-sector (common pool) vessels.

If a sector exceeds its ACE, the sector's ACE will be reduced in the following year and the sector may be subject to enforcement action. If the sector exceeds its ACE repeatedly, other enforcement sanctions may be applied by NMFS. These could include a permanent reduction in the sector's share or a withdrawal of the sector's authorization to operate. A permanent reduction in a sector's share will follow any vessels that leave the sector.

If declining stock conditions result in a need to reduce fishing mortality, and all sectors and common pool vessels have operated within TAC limits, a sector's share will not be changed, but the amount this share represents may be due to reduced overall TACs. If stock conditions improve, and a sector stays within its quota while other sectors do not, the sector will receive a temporary increase in share equal to the amount that other sectors exceeded their quota.

Similarly, all sectors will be universally exempt from some multispecies management measures. A sector must request changes or exemptions to other multispecies management measures in its operations plan, as appropriate. The following list of sector exemptions may be modified in the future through a framework adjustment. **With the implementation of this amendment, all sectors will be exempt from:**

- Trip limits on stocks for which a sector receives or acquires an allocation

These universal exemptions only apply to groundfish fishing regulations. They do not apply to requirements implemented by other management plans. For example, certain categories of monkfish permits must use a groundfish DAS when using a monkfish DAS. That requirement continues until or unless the monkfish FMP changes it. If vessel with a monkfish Category C or D permit is in a groundfish sector and wants to use a monkfish DAS and land the monkfish trip limit associated with using a monkfish DAS, then it must use a scallop DAS while that is required

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by the monkfish FMP. The same vessel can instead not use either a scallop or monkfish DAS and be limited to the monkfish trip limit for vessels not fishing on a monkfish DAS.

Rationale: This section clarifies the exemptions that apply to all sectors, minimizing the administrative burden for sectors since they do not have to request these exemptions, and for NMFS since the agency will not have to evaluate the universal exemptions.

1.1.1.10 Movement between Sectors

Each sector will set its own rules on movement into and out of the sector.

Rationale: By not mandating the commitment time to a sector and allowing the sectors to set their own rules, the sector might be more successful in the long-term. This success will be realized, while working within their allocation (hard TAC), the group will be largely self-regulating.