

March 9, 2011

To Whom It May Concern:

NOAA's National Marine Fisheries Service (NMFS) must, on an annual basis, approve dockside and at-sea monitoring service providers to provide these respective services for Northeast (NE) multispecies sectors for each fishing year (FY). For FY 2010 (May 1, 2010, through April 30, 2011), NMFS approved four companies to provide both at-sea and dockside monitoring services, and one company to provide only dockside monitoring services, in the final rule implementing Amendment 16 to the NE Multispecies Fishery Management Plan (FMP) (75 FR 18262; April 9, 2010). As stated in that rule, approval was based on the completeness of the applications received and a determination of each provider's ability to perform the duties and responsibilities of a dockside and/or at-sea monitoring service provider, as required by the Amendment 16 monitoring provider standards. We have passed the midpoint of FY 2010 and are planning for FY 2011. In order to provide dockside and/or at-sea monitoring services in FY 2011, all companies wishing to provide this service must apply to, and be approved by, NMFS. The FY 2011 process for new dockside and/or at-sea monitoring service applicants, and the standards that NMFS will use for approval, are explained below.

The regulations, at 50 CFR 648.87(b)(4)(i), specify the dockside monitoring provider application requirements that you must submit, including: Corporate information, signed statements, descriptions of abilities and prior experience, evidence of adequate insurance, proof of benefits and personnel services, proof that monitors have passed adequate training, an emergency action plan, and evidence that the company is in good financial standing. An excerpt of the regulations is attached to this letter. Approval or denial of providers not previously approved for FY 2010 will be based on the completeness of the applications received and a determination of each provider's ability to perform the duties and responsibilities of a dockside and/or at-sea monitoring service provider, as required by the Amendment 16 monitoring provider standards.

NMFS will review all applications and will publish its final decision on approved dockside monitoring providers for FY 2011 in a notice in the Federal Register. Applications should include a cover letter, information and statements addressing the regulations as noted above, and documentation of compliance with the requirements.

This letter also notifies you of some changes to the dockside monitoring program that are being considered for FY 2011. First, NMFS intends to propose requiring dockside monitors to board vessels after an offload to confirm whether or not all fish has been offloaded. Second, the New England Fishery Management Council has approved Framework Adjustment (FW) 45 to the NE Multispecies FMP, which includes a number of changes to the dockside monitoring program (explained below). FW 45 is currently under NMFS review and NMFS will publish a proposed rule to solicit comment on these measures prior to making a final decision.

FW 45, as approved by the Council, removes the requirement that dockside monitoring of sector catches be funded by sectors in FY 2011 and FY 2012. The Council voted to require that NMFS provide as much funding as possible for dockside monitoring with a target of 100 percent of trips monitored if funds are available, with priority given to trips that do not have an at-sea observer, at-sea monitor, or approved electronic monitoring. In FW 45, the Council also voted to remove consideration of dockside monitoring requirements as an element of the reporting system, which would allow sectors to request an exemption from these monitoring requirements. You should be aware that many sectors have requested exemptions from all, or part, of the dockside monitoring requirements for FY 2011.

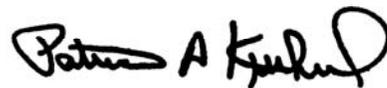
For FY 2011, sectors will continue to select, and contract directly with, one or more approved dockside monitoring providers. NMFS intends to continue to fund dockside monitoring through the existing reimbursement program administered by the Gulf of Maine Research Institute and will determine the target provider coverage level after approval of the proposed spending plan for fiscal year 2011. Currently, NMFS believes it has funding to target approximately 62 percent of trips for dockside monitoring. NMFS will continue to provide at-sea monitors and observers for the groundfish industry. Independent at-sea monitoring programs remain voluntary for sectors in FY 2011.

Please submit the requested documents to NMFS at the following address:

National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930
Attn: Mark Grant

If you have any questions regarding this request, please contact Mark Grant at (978) 281-9145.

Sincerely,



Patricia A. Kurkul
Regional Administrator

Enclosure:
Excerpt from the NE multispecies
dockside monitoring standards

Excerpt from the Northeast Multispecies Fishery Regulations

50 CFR 648.87(b)(4)

(4) *Independent third-party monitoring provider standards.* Any service provider intending to provide dockside/roving and at-sea/electronic monitoring services described in § 648.82(n)(2) and paragraph (b)(1)(v) of this section must apply to and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act. NMFS shall approve/certify service providers and associated dockside, roving, and/or at-sea monitors as eligible to provide sector monitoring services specified in this part and can disapprove/decertify service providers and/or individual monitors through notice in writing to individual service providers/monitors if the following criteria are no longer being met:

(i) *Service provider information.* As part of the application for service provider approval/certification, potential service providers must include at least the following information:

(A) 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;

(B) Contact information for official correspondence and communication with any other office;

(C) 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;

(D) 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;

(E) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments including, but not limited to, recruiting, hiring, deployment, and personnel administration;

(F) 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;

(G) Evidence of adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover dockside, roving, and at-sea monitors (including during training); vessel owner; and service provider;

(H) Proof of benefits and personnel services provided in accordance with the terms of each monitor's contract or employment status;

(I) Proof that the service provider's dockside, roving, and at-sea monitors have passed an adequate training course sponsored by the service providers to the extent not funded by NMFS that is consistent with the curriculum used in the current yearly NEFOP training course, unless otherwise specified by NMFS;

(J) An Emergency Action Plan 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; and

- (K) Evidence that the company is in good financial standing;
- (ii) *Service provider performance requirements.* Dockside/roving and at-sea monitoring service providers must be able to document compliance with the following criteria and requirements:
- (A) A service provider must establish and carry out 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, as follows:
- (1) A service provider must be available to industry 24 hr per day, 7 days per week, with the telephone system monitored a minimum of four times daily to ensure rapid response to industry requests;
- (2) 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 sectors, or a subset of ports as part of a contract with a particular sector;
- (3) 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;
- (4) A service provider must assign dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanisms 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;
- (5) A service provider's dockside, roving, and at-sea monitor assignment must be fair, equitable, representative of fishing activities within each sector, and able to monitor fishing activity throughout the fishing year;
- (6) 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 as required by this section;
- (B) 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;
- (C) 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;
- (D) The service provider must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (i.e., sectors and participating vessels) and between the service provider and specific dockside, roving, or at-sea monitors;
- (E) The service provider 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.;
- (F) 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:

(1) 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;

(2) 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;

(3) For the purposes of at-sea monitoring, if the service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described in §600.746; and

(4) Failure to pay for previous deployments of dockside, roving, or at-sea monitors, or other approved at-sea monitoring mechanism.

(G) With the exception of a service provider offering reporting, dockside, and/or at-sea monitoring services to participants of another fishery managed under Federal regulations, a service provider must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of service providers;

(H) A system to record, retain, and distribute the following information to NMFS, as requested, for a period specified by NMFS, including:

(1) Dockside, roving, and/or at-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals;

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

(3) Hail reports, landings records, and other associated interactions with vessels and dealers.

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

(J) A service provider must be able to supply dockside and at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.