

### Observer Coverage

NMFS was ordered by the Court to expand for all gear sectors its observer coverage in the NE multispecies fishery by providing 5-percent coverage, or higher, if statistically necessary to monitor and collect information on bycatch, as well as other biological and fishery-related information. Additionally, NMFS was ordered, by May 1, 2003, to expand further its observer coverage to 10 percent for all gear sectors, or that level necessary to provide statistically reliable data. Regarding this issue, NMFS has determined that 5 percent observer coverage would provide sufficiently robust statistical data to assess the amount and type of bycatch in the NE multispecies fishery. This conclusion is based upon an analysis of the relative precision of discard estimates of 17 groundfish stocks, using observer coverage and landings data for the year 2000 (Northeast Fisheries Science Center, 2003).

### NE Multispecies DAS Leasing Program

Under this proposed rule, NMFS would implement a program to allow limited access NE multispecies permit holders to lease NE multispecies DAS to one another, under the conditions and restrictions described below. For purposes of this Program, the term "lease" refers to the transfer of the use of DAS from one limited access NE multispecies vessel to another for no more than one fishing year (except if carried over). Implementation of the proposed Program on an emergency basis is necessary to provide the fishing industry with an opportunity to mitigate the potential economic harm caused by the continuation of the restrictive measures that would be implemented by the proposed action, while maintaining conservation neutrality. In addition, this program is designed to allow for efficient and effective administration by NMFS.

### Vessels Eligible to Lease NE Multispecies DAS

All vessels with a valid limited access NE multispecies DAS permit would be eligible to lease NE multispecies DAS to or from another such vessel through the Program, unless otherwise noted below. Eligible vessels acquiring leased NE multispecies DAS would be termed the "lessee," or transferee, and eligible vessels leasing-out NE multispecies DAS would be termed the "lessor," or transferor. Although all eligible vessels would be allowed to lease NE multispecies DAS from another such vessel, vessels holding the minimum

allocation of 8 DAS would be prohibited from leasing-out, or transferring, DAS under the Program. Prohibiting vessels with the minimum allocation of 8 DAS from leasing-out their DAS to another vessel would prevent previously inactive (latent) DAS from becoming active, since most of these vessels fished either zero DAS or close to zero DAS during the 1996–2000 qualification period. This restriction would be necessary to promote the conservation neutrality of the Program. For similar reasons, NE multispecies DAS associated with Confirmation of Permit Histories (CPH) would be prohibited from being activated for the sole purpose of leasing-out DAS to another vessel.

The proposed Program and its restrictions and conditions are described below:

### NE Multispecies DAS Leasing Application

Under this proposed rule, an eligible vessel owner wanting to lease NE multispecies DAS would be required to submit a complete application to lease DAS (Application) at least 45 days prior to the time that the vessel intends to fish the leased DAS. (Vessels fishing with a vessel monitoring system would likely be able to receive notification of an approved lease agreement sooner than 45 days.) Upon approval of the Application by NMFS, the lessor and lessee would be sent written confirmation of the approved application. Leased DAS would be effective only during the fishing year for which they were leased, unless the vessel has carry-over DAS (see below). A vessel may lease to as many qualified vessels as desired, provided that all of the restrictions and conditions described in this proposed rule are complied with.

An Application may be submitted at any time throughout the fishing year, up until March 1. A complete application would consist of the following: Lessor's (transferor) owner name, vessel name, permit number and official number or state registration number; lessee's (transferee) owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total price paid for the leased DAS; signatures of lessor and lessee; and date the form was completed. Information obtained from the Application would be held confidential in accordance with the Magnuson-Stevens Act and applicable regulations.

The Regional Administrator could reject an Application for any of the following reasons: The application is

incomplete or submitted after the March 1 deadline; the lessor or lessee does not possess a valid limited access NE multispecies permit; the lessor's or lessee's DAS are under sanction; lessor's vessel is prohibited from fishing; the lessor's limited access multispecies permit is sanctioned; or the lessor has an insufficient number of allocated DAS available to lease. Upon denial of an Application, the Regional Administrator would send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator would be the final agency decision and there would be no opportunity to appeal the Regional Administrator's decision as specified in NMFS' regulations.

### Sub-leasing and Carry-over Prohibition

Under this proposed rule, no sub-leasing of NE multispecies DAS would be allowed. This means that, once a lease application is approved by NMFS, the leased DAS could not be leased a second time, even if the lessee was prevented from fishing the leased DAS due to circumstances beyond his/her control (e.g., a vessel sinking). This restriction is necessary to ensure NMFS' ability to administer and account for all leased DAS in an efficient manner.

Under this proposed rule, eligible vessels would be allowed to carry over up to 10 DAS, regardless of whether these DAS were allocated or leased days, in order to promote safety at sea in the waning days of the fishing year. Thus, a vessel that purchased leased DAS that remained unused at the end of the fishing year would be allowed to carry over these leased DAS to the subsequent fishing year. To determine DAS fished for a given fishing year, a vessel's allocated DAS (as opposed to DAS that it acquired through lease) would be counted first for purposes of determining how many DAS remain for the fishing year. As an example, if a vessel was allocated 50 DAS and acquired an additional 20 DAS by leasing them from another vessel, that vessel would have 70 DAS that it could use during the fishing year. If that vessel, for whatever reason, used only 60 DAS during that year, NMFS would consider that the vessel's 50 allocated DAS were used first, and that 10 of the leased DAS were then used. The remaining 10 leased DAS that were unused would be carried over to the next fishing year.

### Minimum and Maximum Leased DAS

This proposed rule would require that vessels lease a minimum of 5 NE multispecies DAS to any one vessel, or the full amount of the vessel's