

Vessel C in the subsequent fishing year, if they are carried over and used). In cases where a horsepower adjustment factor is applied to leased DAS, the number of DAS attributed to the lessor for those leased DAS used would be the actual number of DAS leased, prior to the calibration reduction. For example, suppose Vessel A leased 10 DAS from Vessel B and, because Vessel A is in a larger horsepower category than Vessel B, the 10 leased DAS were reduced to 8.8 DAS that could actually be fished. If the 8.8 leased DAS were fished by Vessel A, then Vessel B would still be credited with 10 DAS used for that year, for purposes of its DAS use history.

Termination of NE Multispecies DAS Leasing Program

Under this proposed rule, the Regional Administrator would maintain the authority to terminate acceptance of new applicants to the Program if, due to unanticipated impacts, she determines that the goals of reducing fishing mortality or increasing economic opportunity would be seriously undermined by allowing the continuance of leasing of DAS. If such a determination is made, the public would be notified through rulemaking consistent with the Administrative Procedure Act (APA), and would be based upon information including, but not limited to, projected landings, patterns of DAS use, or information obtained from the leasing program.

Monkfish Category C and D Vessels

Similar to the August 1, 2002, interim rule measures, a vessel with both a limited access NE multispecies permit and a limited access monkfish permit (monkfish Category C or D vessels) for which the NE multispecies DAS reductions proposed under this proposed emergency rule would result in the vessel having more allocated monkfish DAS than NE multispecies DAS, the vessel would be allowed to fish under a monkfish-only DAS when multispecies DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit, or unless otherwise noted below. Under this proposed rule, monkfish Category C and D vessels that have remaining monkfish-only DAS at the time of implementation of this emergency rule, and that have submitted a NE Multispecies DAS Leasing Application that has been approved by NMFS, would be required to fish their available "monkfish-only" DAS in conjunction with their leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available. This is consistent with the

original intent of the Monkfish Fishery Management Plan (Monkfish FMP).

Under this proposed rule, if a monkfish Category C or D vessel leases DAS to another vessel, the vessel is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated multispecies DAS, leased 10 of its multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS - 37 multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease. The Monkfish FMP specifies that monkfish Category C and D vessels must fish a NE multispecies DAS concurrently with a monkfish DAS. Not deducting monkfish DAS in a situation where NE multispecies DAS are leased (transferred) would allow monkfish and NE multispecies DAS to be fished independently. This could create a significant effort increase in the monkfish fishery.

Other Proposed Modifications to Regulations

For the 2002 fishing year, vessels electing a Day or Trip gillnet designation were allowed to change their designation prior to September 1, 2002. This exemption applied only to the 2002 fishing year and would therefore be eliminated by this proposed rule.

In the August 1, 2002 interim rule, the Cashes Ledge Area Closure regulations omitted a reference to transiting, under a listing of allowable exemptions to the closure, and would therefore be corrected by this proposed rule.

Classification

This rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the SUMMARY section of the preamble and in the IRFA. For management measures that continue the Settlement Agreement, gross revenue in the absence of reliable cost data is considered to be a proxy for profitability. For leasing of DAS, profitability is estimated using a break-

even analysis. A summary of the analysis follows:

The IRFA considered three alternatives: The proposed emergency action, the No Action alternative, and a Hard TAC alternative. Analysis of the proposed emergency action examined the impacts on industry that would result from the continuation of the current management measures (Settlement Agreement), with implementation of a days-at-sea (DAS) leasing program. Analysis of the No Action alternative examined the impacts on industry that would result from implementation of the management measures that were in place for the 2001 fishing year (prior to implementation of the Court Order) and allowing fishing inside the WGOM Area Closure. Analysis of the hard TAC alternative examined the impacts to the industry that would result from a hard TAC system that achieved similar fishing mortality reductions as the proposed emergency action. The economic impacts of the first two alternatives were analyzed and described according to the type of management measure as follows: (a) Commercial measures that were modeled (DAS restrictions, area closures, and trip limits); (b) commercial measures that were not modeled (changes to the open access hand gear category, prohibition on frontloading, prohibition on de-hooker use, mesh size restrictions, and limitations on the number of gillnets and hooks); and (c) recreational measures (private recreational vessel and party/charter). The hard TAC alternative is a fundamentally different type of management scheme and the economic impacts were examined in a qualitative manner.

All commercial vessels with a multispecies permit had gross receipts less than \$3.5 million, the SBA size standard for defining a small versus large commercial fishing business (3,894 multispecies vessels) (Environmental Assessment of the Settlement Agreement, June 2002). Therefore, there would be no disproportionate economic impacts between small and large entities.

The proposed measures would impact all limited access permit holders (1,383), all open access Hand gear-only permit holders (2,973), and all party/charter operators (1,028 open access permit holders). Based upon the June 2002 Environmental Assessment, the number of participating vessels that may be affected by any one or more of the proposed measures is about 37 percent of the total number of those eligible to participate in some component of the multispecies fishery.