

operating changes have not demonstrated similar issues in the cost-of-equity estimates produced by CAPM as they have for Morningstar/Ibbotson MSDCF. Accordingly, the Board proposes that to reduce the impact of short-term operating changes on the cost of capital, it is not necessary for the Board to modify CAPM.

CAPM, generally, is a backward-looking model while MSDCF is more forward-looking, each looking at different market data. *R.R. Cost of Capital—2018*, EP 558 (Sub-No. 22), slip op. at 3. To maintain an equal balance between forward-looking and backward-looking models, the Board proposes to use a weighted average of the three models in its cost-of-equity calculation, with CAPM weighted at 50%, Morningstar/Ibbotson MSDCF weighted at 25%, and Step MSDCF weighted at 25%. Furthermore, because the Board has not found that MSDCF is superior to CAPM, or vice versa, it is reasonable to use a weighted average of the three models that allows both model types to continue to contribute equally to the cost of equity.

When applied over a 10-year historical analysis period, the weighted average of the three models results in a lower variance than a forecast relying on the average of CAPM and Morningstar/Ibbotson MSDCF alone. For the period 2009 through 2018, the average of CAPM and Morningstar/Ibbotson MSDCF produces a cost of equity ranging from 10.31% to 13.86% with a standard deviation of 1.18. Over the same period, the weighted average of the three models produces estimates between 10.25% and 13.45% with a standard deviation of 1.09. See Appendix B.

Adding Step MSDCF to the Board's current methodology for calculating the cost of capital is consistent with the Rail Transportation Policy. 49 U.S.C. 10101. For instance, having a methodology that more robustly estimates the cost-of-equity component of the cost of capital would better ensure that rail carriers are allowed to earn adequate revenues. section 10101(3); see also *Standards for R.R. Revenue Adequacy*, 364 I.C.C. 803, 811 (1981), *aff'd sub nom. Bessemer & Lake Erie R.R. v. ICC*, 691 F.2d 1104 (3d Cir. 1982) (concluding that "the only revenue adequacy standard consistent with the requirements of [The Staggers Rail Act of 1980] is one that uses a rate of return equal to the cost of capital"). As noted, Morningstar/Ibbotson MSDCF is more sensitive to growth rate changes in the short term relative to Step MSDCF, and Step MSDCF may be better suited for some periods, or even over the long run.

Interested parties are invited to comment on the proposed use of Step MSDCF described above in conjunction with CAPM and Morningstar/Ibbotson MSDCF currently used by the Board. Parties are encouraged to address issues such as the most appropriate way to integrate the three models into the cost-of-capital calculation, including the particular weighting that each model should have.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities, (2) analyze effective alternatives that may minimize a regulation's impact, and (3) make the analysis available for public comment. Section 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a "significant impact on a substantial number of small entities," section 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rule. *White Eagle Coop. v. Conner*, 553 F.3d 467, 480 (7th Cir. 2009).

The Board certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities as defined by the RFA. Cost of capital is calculated for those Class I carriers that meet certain criteria developed in *Railroad Cost of Capital—1984*, 1 I.C.C.2d 989 (1985), and modified in *Revisions to the Cost-of-Capital Composite Railroad Criteria*, EP 664 (Sub-No. 3) (STB served Oct. 25, 2017). Therefore, the Board's proposed methodology will apply only to Class I rail carriers, and there will be no impact on small railroads. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Additional information supporting the Board's revised proposal is contained in the Board's decision (including appendices) served on

October 11, 2019. To obtain a copy of this decision, visit the Board's website at <http://www.stb.gov>.

It is ordered:

1. The Board proposes to revise its methodology for determining the railroad industry's cost of capital as set forth in this decision. Notice of this decision will be published in the **Federal Register**.

2. Comments are due by November 5, 2019. Reply comments are due by December 4, 2019.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

4. This decision is effective on its service date.

Decided: October 11, 2019.

By the Board, Board Member Begeman, Fuchs, and Oberman.

Kenyatta Clay,
Clearance Clerk.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 191011–0061]

RIN 0648–BJ01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Trap Fishery of the U.S. Virgin Islands (USVI); Control Date

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

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This notice announces the establishment of a control date of September 1, 2017, that the Caribbean Fishery Management Council (Council) may use if it decides to create restrictions limiting participation in the spiny lobster trap fishery in the exclusive economic zone (EEZ) off St. Thomas and St. John, or St. Croix, U.S. Virgin Islands (USVI). Persons entering the fishery in either area after the control date will not be assured of future access should a management regime that limits participation in the fishery be prepared and implemented. NMFS invites comments on the establishment of this control date.

DATES: Written comments must be received by November 18, 2019.

ADDRESSES: You may submit comments identified by “NOAA–NMFS–2019–0070” by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov / `#!docketDetail;D=NOAA-NMFS-2019-0070`, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Sarah Stephenson, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, 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 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).

FOR FURTHER INFORMATION CONTACT:

Sarah Stephenson, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: sarah.stephenson@noaa.gov.

SUPPLEMENTARY INFORMATION: The spiny lobster trap fishery is managed under the Fishery Management Plan (FMP) for the Spiny Lobster Fishery of Puerto Rico and the USVI. However, NMFS notes that the Council is in the process of transitioning Federal fisheries management in the U.S. Caribbean from four species-based FMPs for Puerto Rico and the USVI to three island-based FMPs (Puerto Rico FMP, St. Thomas and St. John FMP, and St. Croix FMP). The island-based FMPs would manage multiple species, including spiny lobster, within the EEZ defined for each island management area (appendix E to part 622).

Currently in the U.S. Caribbean, which includes Puerto Rico and the USVI, there is no Federal permit for the

spiny lobster trap fishery. However, the territorial governments of Puerto Rico, St. Thomas and St. John, and St. Croix issue commercial fishing licenses for their territorial waters.

At their August 2018 meeting, the Council recommended a control date of September 1, 2017, for the spiny lobster trap fishery off the USVI. The control date would apply to persons who have entered or are contemplating entering this fishery after September 1, 2017. The control date would be applicable under the current FMP and it is the Council’s intent that it would also be applicable under the island-based FMPs, if approved.

Previously, the Council established a control date of February 10, 2011 (78 FR 20496, April 5, 2013), for the commercial spiny lobster trap fishery in the U.S. Caribbean operating in Federal waters off Puerto Rico and the USVI. At their August 2018 meeting, the Council discussed modifying the previous control date for the spiny lobster trap fishery off the USVI to address more recent concerns presented at that meeting by spiny lobster trap fishermen and the USVI government. Specifically, with the planned implementation of the island-based FMPs, potential increases in annual catch limits for spiny lobster in the EEZ off the USVI could increase fishing effort that would affect the fishery, which historically has been small-scale and market-driven. Both spiny lobster trap fishermen and the USVI government were concerned that, in the future, new participants may establish large-scale operations for harvesting spiny lobster that would impact the ecosystem (*i.e.*, more traps deployed), historical participants, and fishing communities.

In order to preserve and protect the economically and culturally important spiny lobster trap fishery in the USVI, the Council decided to update the previous control date of February 10, 2011, and establish a September 1, 2017, control date for the spiny lobster trap fishery around the USVI. The Council selected September 1, 2017, as the control date because, soon thereafter, Hurricanes Maria and Irma severely curtailed fishing activities in the USVI. Therefore, the Council determined the period prior to September 1, 2017, best represents historic participation in the spiny lobster trap fishery in the USVI.

The control date enables the Council to inform current and potential participants that it may consider creating restrictions to limit participation or other measures in the spiny lobster trap fishery around St. Thomas and St. John, or St. Croix, USVI.

The Council requested that this control date be published in the **Federal Register** to notify fishermen that if they entered the fishery after September 1, 2017, they may not be assured of future access if the Council or NMFS decide to limit entry or impose other measures to manage the spiny lobster trap fishery around St. Thomas and St. John, or St. Croix, USVI.

Establishment of this control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the spiny lobster trap fishery around St. Thomas and St. John, or St. Croix, USVI. Fishermen are not guaranteed future participation in the trap fishery regardless of their level of participation before or after the control date. The Council may recommend a different control date or it may recommend a management regime that does not involve a control date. Other criteria, such as documentation of landings or fishing effort, may be used to determine eligibility for participation in a limited access fishery. The Council or NMFS also may choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded. Any action by the Council will be taken pursuant to the requirements for fishery management plan and amendment development established under the Magnuson-Stevens Fishery Conservation and Management Act.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the spiny lobster trap fishery in the EEZ off St. Thomas and St. John, and St. Croix, USVI.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 15, 2019.

Samuel D. Rauch, III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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