

comment period on the corrected Amendments.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an 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 this section in the preamble and in the SUMMARY section of the preamble. This proposed rule would not duplicate any other requirements. A summary of the analysis follows.

NMFS prepared an IRFA and concluded that this proposed rule, if adopted, would have a significant economic impact on a substantial number of small business entities. A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. Under a rule promulgated on June 28, 2002 (67 FR 43558), all for-hire operators in the reef fish and/or coastal migratory pelagic fisheries in the Gulf of Mexico exclusive economic zone (EEZ) were required to have a valid limited access moratorium permit beginning December 26, 2002. The objective of that rule is to cap the number of for-hire vessels permitted to fish for reef fish or coastal migratory pelagics in the EEZ of the Gulf of Mexico at the current level while the Council assesses the actions necessary to restore overfished reef fish and king mackerel stocks and determine whether a more comprehensive effort management system is appropriate for these fisheries. Subsequent to publication of the rule, it was determined that the amendment did not correctly reflect the actions approved by the Council, resulting in the unintentional exclusion of 935 historical participants in the fishery. As an interim measure prior to correcting this error via normal rulemaking, NMFS promulgated an emergency rule that extended several dates associated with the moratorium to allow those participants erroneously excluded from qualifying for a moratorium permit to continue participation in the fishery while the current proposed rule is prepared. The primary objective of the proposed rule is, therefore, to correct the error associated with the eligibility criterion for the for-hire moratorium permit. The proposed rule would revise, consistent with the Council's clarification of intent, one of the eligibility criteria for obtaining a Gulf charter vessel/headboat moratorium permit to remove a restrictive provision requiring that a valid permit was held

on July 29, 2002. Complementary logistical adjustments, e.g., reopening the application process, extension of deadlines, etc., are also included.

The qualification requirements for the initial issuance of the moratorium permit will mandate the provision of information necessary to establish qualification for the permit, such as information on income, record of past participation in the fishery, and proof of the time a vessel was under construction. Permit renewal will require that permitted vessels participate in the standard data collection programs implemented in the region which will require that information be maintained on standard vessel operation information, such as trips, passenger loads, catch success, etc. All information elements required for these actions are standard elements essential to the successful operation of the business and should already be collected and maintained as standard operating practice by the business. These requirements do not require professional skills, and, therefore, may be deemed not to be onerous on the affected participants.

No duplicative, overlapping, or conflicting Federal rules have been identified.

Two categories of impacted entities are presumed, those that qualify for the for-hire permit and those that do not. Those who qualify for permits fall under two groups; those who qualify based on permit records and those who qualify based on the provisions for historical captains or vessel-under-construction. Based on permit records, an estimated 3,071 permitted for-hire vessels would qualify for the moratorium permit, of which 1,917 would qualify for both reef fish and coastal migratory pelagic permits, 974 would qualify for only the coastal migratory pelagic permit, and 180 would qualify for only the reef fish permit. In addition to these vessels, an indeterminate number of entities would qualify for the initial issuance of the for-hire moratorium permit under the historical captain or vessel-under-construction criteria. In total, the two groups would constitute the universe of qualified entities. A precise estimate of this universe cannot be provided as, although it can be presumed that all active permits will be maintained to allow either sale of the permit or continued use, it cannot be determined how many entities will qualify under the historical captain or vessel-under-construction criteria. Of the 3,071 qualifying vessels, 2,136 vessels qualify under the status quo moratorium program, of which 1,373 vessels qualify for both permits, 99 vessels qualify for

only the reef fish permit, and 664 vessels qualify for only the coastal migratory pelagic for-hire permit. The proposed action would, therefore, allow the qualification of an additional 935 vessels, of which 544 vessels would qualify for both permits, 81 vessels would qualify for the reef fish permit, and 310 vessels would qualify for the coastal migratory pelagic permit. These 935 vessels represent approximately 30 percent of the historic fleet. It should be noted that all 3,071 vessels, including the 935 vessels that would additionally qualify as a result of the proposed rule, are all historical participants in the fishery. This condition is reflective of the Council's intent to stabilize participation at historical levels.

Business operations in the for-hire sector consist primarily, if not exclusively, of small business entities. For-hire vessel operations are considered small business entities if they generate receipts not in excess of \$5.0 million per year. The average gross revenues for charter boats operating in 1997 was \$83,000 for vessels operating in Alabama, Mississippi, Louisiana, and Texas (based on average numbers of trips per vessel and average fee per trip) and \$68,000 for vessels in Florida, while the average gross revenues for head boats/party boats was \$328,000 from Alabama through Texas and \$324,000 in Florida. Current revenues may exceed those of 1997, but the revenue performance of the fishery clearly qualifies the participants to fit the definition of small business entities. Since all entities operating in the fishery as well as the 935 new qualifiers will be affected by the proposed rule, the criterion of a substantial number of the small business entities being affected by the proposed rule will be met.

The determination of significant economic impact can be ascertained by examining two criteria, disproportionality and profitability. The disproportionality question is: Will the regulations place a substantial number of small business entities at a significant competitive disadvantage to large business entities? Although some variation exists between vessel operation type (guide boat, charter boat, and head/party boat), vessel length, and degree of participation in the fishery (number of trips per year), all vessels are classified as small business entities. Thus, the issue of disproportionality is not relevant in the present case.

The profitability question is: Will the regulations significantly reduce profit for a substantial number of small entities? Two categories of operations will be affected by the final rule, qualifying vessels and non-qualifying