

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. This final rule will, therefore, allow the qualification of an additional 935 vessels, of which 544 vessels will qualify for both permits, 81 vessels will qualify for the reef fish permit, and 310 vessels will 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 final 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 \$6.0 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 vessels operating in Alabama to 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 final rule, the criterion of a substantial number of the small business entities being affected by the 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 vessels. Effects on qualifying vessels may accrue through the permit fee, the reporting requirement, and the limitation on passenger capacity expansion. While permit fees are \$50 for the first permit and \$20 each for any additional permit, all vessels are currently required to possess a permit. Thus, permit costs should not be substantially affected, nor should they significantly affect profits. The reporting requirement impacts time expenses rather than actual monetary outlays and, therefore, do not directly affect profitability. However, the time expenses are estimated at \$13 for charterboat participants (5.5 interviews x 7 minutes per interview x \$20 per hour) and \$700 for headboat participants (140 logbooks per headboat x 15 minutes per logbook x \$20 per hour). The effects on profits of the limitation on passenger capacity expansion cannot be estimated because neither the cost of purchasing an existing permit, the expected rate of expansion (what portion of vessels might be expected to expand their passenger capacity), or the expected average capacity expansion can be forecast.

Additionally, the 935 vessels that were previously erroneously excluded from qualification for the moratorium permit, and that would now be qualified under the final rule, will be allowed to continue their historic participation and accompanying profit performance and in addition will experience a substantial increase in profitability over what would occur under the status quo since they would have been precluded from continued participation under the June 28, 2002 rule. Since this is an increase in profit and not a decrease, significant reductions in profit are not expected to occur.

Effects on non-qualifying vessels would consist of the effects on business profits of not being allowed to continue participation in the fishery or enter the fishery without purchasing an existing

permit. The effects on profits of these vessels is unknown since neither the price of the necessary permit nor the alternative business options (what they might do and what the profitability profile of this option is in lieu of participating in the for-hire fishery) for these vessels are known. It is also not possible to estimate the number of small entities this would affect, primarily because it can not be determined how many small business entities would seek to enter the fishery in the absence of the moratorium.

This final rule will allow qualification for the moratorium permit and continued operation of 935 vessels, or approximately 30 percent of the historic participants, in addition to the 2,136 vessels qualified under the status quo moratorium program, plus an unknown number of qualifiers under the historic captain and boat-under-construction provisions. Continued participation by these 935 vessels will allow the avoidance of a significant loss in performance and profits of these small business entities and the fishery as a whole. It is, therefore, concluded that the final rule will result in a significant beneficial economic impact on a substantial number of small entities (i.e., the 935 vessels).

No significant issues were raised by public comments in response to the IRFA. Therefore, no changes were made to the proposed rule as a result of such comments.

Ten alternatives to the initial eligibility requirements were considered. These were: allowing all persons who held a for-hire permit on the date of implementation of the amendment; allowing all persons who held a for-hire permit on either September 16, 1999 or November 11, 1999; using a control date of November 18, 1998 and allowing for continuous participation under permit, vessel replacement by current permitted participant and issuance of new permit, purchase of permitted vessel, or purchase of a new vessel and issuance of a new permit; establishment and eligibility requirements for a Class 1 (fully transferable) species endorsements; establishment and eligibility requirements for a Class 2 (non-transferable) species endorsements; historical captain permit/endorsement provisions (2 alternatives); boat-under-construction provisions (2 alternatives); and allowing all persons who held a for-hire permit on or before January 1, 2002. Since the intent of the Council is to accommodate actual participation existent at the time of amendment development and the perception was strong that many active