standards for SARs, workshop participants suggested that a marine mammal stock that experienced a removal level equal to or less than 10 percent of its PBR could be considered to have an insignificant level of incidental mortality and serious injury approaching zero mortality and serious injury rate because the biological impacts would be negligible (see PBR Workshop Report). Several comments were received on the proposed definition set forth in the workshop report. One commenter agreed that a fishery would have achieved the ZMRG if it took 10 percent or less of a stock's PBR. However, three commenters did not agree because for stocks with a large population size, 10 percent removal could still be a very large number of marine mammals. Even if a fishery achieved this 10 percent goal, these commenters believed the fishery should still try to reduce marine mammal bycatch when possible, regardless of whether the reduction would be necessary to mitigate a biological impact on the stock.

NMFS believes that the ZMRG would be met for a marine mammal stock when the incidental mortality and serious injury from commercial fishing operations are at levels significantly below such stock's PBR so that the incidental mortality and serious injury has a negligible effect on the status of the affected stock. In other words, when the total incidental mortality and serious injury from fisheries has no biological impact, the ZMRG will have been met. NMFS believes that fishers should make every reasonable effort to reduce incidental take below this level. Nevertheless, for the purposes of the MMPA, NMFS is proposing to consider a fishery as having achieved the ZMRG if, collectively with other fisheries, it is responsible for the annual removal of 10 percent or less of any marine mammal stock's PBR level (proposed § 229.2).

Comments and Responses to Draft Regulations To Implement Section 118 From Working Sessions and Written Comments

Informal working sessions to discuss the draft proposed regulations to implement section 118 of the MMPA were held in Silver Spring, MD, on November 30, 1994, and Seattle, WA, on December 2, 1994. Attendees at both sessions included Congressional staff (Silver Spring session only), representatives of conservation groups, members of the fishing community, representatives of state governments, a representative of the Alaska subsistence community (Seattle session only) and NMFS staff. Written comments were also received on the draft proposed regulations to implement section 118. Comments on fishery classification criteria, options for classifying fisheries, and related topics are summarized below along with NMFS' responses. These comments were considered in developing this proposed rule.

Comments on Logbook Data

Some commenters believed that logbook data should be used to classify fisheries. Although logbook information is not and probably will not be reliable enough to determine reliable mortality estimates, the information can be used to determine the minimum mortality of marine mammals in a particular fishery. In addition, qualitative information provided in reports by fishers, such as areas of operation, number of fishers, and relative number of incidental takes, is useful in determining which fisheries need more intensive monitoring programs. When no other information is available for a particular fishery, NMFS will continue to use logbook information collected during the Interim Exemption program to supplement information from the monitoring program (e.g., observer program), and to better understand interactions in those commercial fisheries that are not being observed. Under the proposed rule, fishers will no longer be required to submit logbooks; thus, reports of incidental takes made by fishers will be used to classify fisheries when other information is lacking.

Comments on Criteria When Stock Status or Fishery Take Information Are Lacking

Some commenters believed that fishery classification criteria should not be based on annual takes relative to PBR because in the draft SARs many PBRs were zero (no potential removal level estimated) due to a lack of information on the marine mammal stock in question (e.g., stock size) and this would subject certain fisheries to be classified arbitrarily. Some commenters believed that guidelines must be developed to allow categorization of new fisheries, or fisheries about which little is known. Most commenters supported defaulting new fisheries into Category II.

1. In contrast to the number of zero PBRs in the draft SARs, there are relatively few zero PBRs in the final SARs. Furthermore, fisheries that have annual takes of marine mammals from such stocks generally take more than one species of marine mammal; thus, the fishery can be classified based on a stock with a known PBR.

2. New fisheries for which no information is available on its level of

interaction with marine mammals, and where the frequency of interaction can not be determined by analogy (e.g., gear used), would be deemed to be a Category II fishery until the next annual LOF is published which may recategorize them based on new information. NMFS believes that this would provide for the necessary safeguards to ensure that potentially high levels of incidental mortality and serious injury of marine mammals in new fisheries is appropriately monitored.

Comments on Options for Fishery Classification Criteria

Under section 118 of the MMPA, commercial fisheries must be classified in one of the following three categories:

Category I: Frequent incidental mortality and serious injury of marine mammals;

Category II: Occasional incidental mortality and serious injury of marine mammals;

Category III: A remote likelihood of or no known incidental mortality or serious injury of marine mammals.

Because the 1994 amendments to the MMPA did not define "frequent", "occasional" or "remote likelihood", definitions for these terms must be developed in order to classify fisheries. Several options for criteria to classify fisheries were considered and discussed during the working sessions, and are summarized below.

Option 1: Status Quo. This option would retain the definitions of "frequent", "occasional", and "remote likelihood" contained in the regulations to implementing section 114 (54 CFR 219.3). Under this option, "frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period. "Remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Comments on Option 1. Some commenters stated that the criteria for classifying fisheries under section 118 of the MMPA should be identical to the criteria under section 114. They argued that changing the criteria was not the intent of Congress and might place additional regulatory burden on commercial fishers by increasing the number of fisheries placed in Categories I and II. Furthermore, they were