

concerned about what process would be followed for classifying fisheries under a new set of criteria when little or no data exists from which to estimate fishing mortality or PBR. The majority of the commenters however, supported modification of fishery classification criteria to better reflect the effect of commercial fisheries on individual marine mammal stocks. This approach would allow NMFS to place management emphasis on stocks of particular concern. Attendees at the Seattle session constructed a new set of criteria, which is discussed below under Option 2.

Assumptions of Option 1. This approach assumes that NMFS has fairly reliable estimates of rates of serious injuries and mortalities for vessels per 20 days of fishing in each fishery. For fisheries in which NMFS has placed observers, these rates may vary in accuracy, depending on the level of observer coverage applied. For other fisheries, only information submitted in fishers' logbooks are available. Take rates obtained from fishers' logbooks have been found to vary from those reported by observers for the same fishery, with the general tendency to have observed take rates higher than fisher-reported take rates.

Strengths of Option 1. This criteria scheme is useful in identifying fisheries that have relatively high rates of incidental serious injuries and mortalities across a number of marine mammal stocks, regardless of the status of the stocks involved. These fisheries would be classified as Category I or II fisheries.

Weaknesses of Option 1. This approach is problematic in that it does not account for the size of the fishery as a whole (i.e., the number of vessels participating in the fishery), as it relates to impacts on stocks. For instance, two fisheries may have the same serious injury and mortality rate per 20 days of fishing, yet one fishery may have 20 vessels participating and the other may have 3,000 vessels participating. These two fisheries would have significantly different impacts on a particular stock or stocks of marine mammals.

Also, reporting requirements under section 118 require that fishers report only incidents of serious injury and mortality, and not information on fishing effort. This significantly reduces the information available to calculate takes rates per 20 days of fishing. This information would only be accurate for fisheries in which there are observers.

Option 1 could unnecessarily focus management and resources on fisheries (e.g., monitoring programs, take reduction plans, etc.) that do not have

a significant impact on marine mammal stocks. It may subject more vessel owners to registration, fees, and observer coverage. Finally, NMFS is concerned that option 1 may be inconsistent with the new section 118 because it does not consider the status of or impact to the marine mammal stocks.

Option 2: Base Criteria on Proportions of the Stock Size and PBR. Under this option, proportions of the best estimated stock size and the PBR for a particular marine mammal stock would be used to classify fisheries in the following manner:

Category I: Annual mortality and serious injury exceeds 0.005 of the best population estimate for cetaceans or 0.01 of the best population estimate for pinnipeds.

Category II: Annual mortality and serious injury is greater than 0.005 of the best population estimate but is greater than 0.01 of the PBR for cetaceans or is less than 0.01 of the best population estimate but greater than 0.1 of the PBR for pinnipeds.

Category III: Annual mortality and serious injury is less than 0.1 of PBR.

Comments on Option 2. There was no support for this option.

Option 3: Proportions of PBR. Under Option 3, a proportion of the PBR for a particular marine mammal would be used to classify fisheries in the following manner:

Category I: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 50 percent of PBR.

Category II: Annual mortality and serious injury is greater than 1 percent and less than 50 percent of PBR.

Category III: Annual mortality and serious injury is less than 1 percent of PBR.

Comments on Option 3. Although there was general support for this type of approach, working session participants were concerned that Option 3 did not account for the collective impacts of all fisheries that interact with a marine mammal stock. Working session attendees also recognized that Option 3 did not account for marine mammal stocks that are subjected to a low level of incidental mortality and injury across a number of fisheries.

Option 4: Proportions of PBR—Two-tiered Approach. This approach is a two-tiered scheme that first addresses the total impacts of all fisheries on each marine mammal stock and then addresses the impacts of individual fisheries on each stock. This approach is based on the annual number of serious injuries and mortalities due to

commercial fishing relative to a stock's PBR.

Tier 1: If the annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR of such a stock, then all fisheries interacting with this stock (and no other stocks that do not fit this criteria) would be placed in Category III. Otherwise, these fisheries are subject to the next tier to determine their classification.

Tier 2—Category I: Annual mortality and serious injury of a stock in a given fishery is greater than some percentage of PBR.

Category II: Annual mortality and serious injury is between some percentage and some percentage of PBR.

Category III: Annual mortality and serious injury is less than or equal to some percentage of PBR.

This approach is modeled after the recommendations from the NMFS PBR Workshop held in June 1994 and the working sessions on the draft proposed regulations. The most critical classification threshold is the one between Category II and Category III fisheries because Category III fisheries only have a "remote likelihood" of incidental serious injury or mortality of a marine mammal and would not be subject to the more stringent requirements of Category I or II fisheries. The PBR Workshop participants agreed that serious injury and mortality incidental to commercial fishing operations would be insignificant to a stock if such removals were only a small portion (i.e., 10 percent of the PBR) of the stock. Using this rationale, all fisheries which impact a stock would be considered in the determination of whether impacts to that stock are significant (Tier 1). If the total removals from a stock across all fisheries were greater than 10 percent of the PBR for that stock, the fishery would then be categorized according to the criteria in Tier 2.

The term "some percentage" under Tier 2 is used, because NMFS considered a number of different percentage options under Option 4 (see EA). The threshold between Category I and II fisheries was set at 50 percent of PBR in this proposed rule. NMFS believes that this is a conservative approach, and in its analysis there were few additional fisheries added to Category I as a result of lowering the dividing line from exceeding PBR to 50 percent of PBR (see EA).

Comments on Option 4. Attendees at the Seattle working session supported the concept of basing fishery classification on takes relative to PBR, and the two-tier system that is presented