

here as Option 4 resulted from that session. At the Silver Spring working session, there was also some support for this approach, but others believed that the criteria should remain as they were under section 114.

Assumptions of Option 4. This two-tiered approach assumes that NMFS has fairly accurate information on both the abundance of a stock (in order to calculate PBR) and the current level of incidental serious injury and mortality due to commercial fishing per year. For some cases, both the estimated fishing mortality and the PBRs of marine mammal stocks incidentally taken in that fishery are known with some degree of confidence. In these cases, fishing mortalities and serious injuries were calculated using data collected by observers. If observer data were not available, fishers' logbooks were used to estimate removal levels. However, it is assumed that logbooks provide only a minimum indication of total removal levels. In cases where the PBR for a stock is unknown, any known or inferred level of removal from that stock by a fishery usually warranted placement of that fishery in Category II so that better information could be collected.

For some fisheries, NMFS must use its best estimate of fishing mortality and serious injury based on inferences from similar fishing techniques, gear used, target species, seasons and areas fished, and species and distribution of marine mammals in the area. This method of inferring levels of removals was also used under regulations to implement section 114. In most of the Category III fisheries for which NMFS has no updated information to support a change in classification, the Category III designation was maintained.

Strengths of Option 4. This approach categorizes fisheries based on their impacts on stocks, thereby prompting take reduction teams to be formed first for those stocks of greatest concern. Option 4 would alleviate the burden of the management program for those fisheries that do not significantly interact with marine mammal stocks (Category III), because Category III vessel owners would not be required to register, pay fees, or take aboard an observer. Option 4 would focus management resources on those commercial fisheries that have impacts to marine mammals that are more than negligible. Furthermore, this approach would allow for the classification of fisheries that have only rare occurrences of serious injuries and mortalities as Category II, if the stock subject to removal has a very low PBR level and

could be greatly impacted by even a low level of taking.

Weaknesses of Option 4. This approach does not specifically address fisheries that have a high frequency of marine mammal serious injuries and mortalities across several stocks. These could be classified as either Category I, II, or III depending on the stocks with which they interact. This may affect the prioritization of take reduction team formation, although, eventually, take reduction teams must be formed for marine mammal stocks that have significant incidental interactions with Category I or II fisheries.

Criteria for Categorizing Fisheries

NMFS believes that the 1994 amendments to the MMPA emphasized management of the interaction between commercial fisheries and marine mammals on a stock-specific basis. For this reason, NMFS proposes to use Option 4 (discussed above) and the proposed definitions of frequent, occasional, and remote (proposed § 229.2) were used to classify commercial fisheries. This requires the previous proposed changes to the LOF to be revised and to be repropounded by this notice.

Zero Mortality Rate Goal

NMFS proposes to consider a fishery as having reached the ZMRG when collectively with other fisheries, it is responsible for the annual removal of (1) 10 percent or less of any marine mammal stock's PBR, or (2) more than 10 percent of any marine mammal stock's PBR, yet the fishery by itself is responsible for the annual removal of one percent or less of that stock's PBR (proposed § 229.2).

It is not possible to determine whether a level of mortality to a declining stock of marine mammals is insignificant simply by applying a mechanistic definition such as the one set forth above. Therefore, fisheries that kill or seriously injure declining, depleted, threatened, or endangered stocks of marine mammals would have to be examined separately to determine whether the incidental take is insignificant.

Another option for defining the ZMRG draws from the 1981 amendments to the MMPA that addressed reducing mortality of small cetaceans in the yellow-fin tuna fishery in the Eastern Tropical Pacific Ocean (ETP). In 1981, Congress expressed it was not its intent to shut down the tuna fishery via the MMPA and that the ZMRG could be achieved in that fishery by requiring the use of the best marine mammal safety techniques and

equipment that are economically and technologically practicable (H.R. Rep. 228, 97th Cong., 1st Sess. 13 (Sept. 16, 1981)). If a similar rationale were adopted for other fisheries, the following might be an option for defining the ZMRG: "Zero Mortality Rate Goal means the reduction of the annual number of incidental mortalities and serious injuries in each fishery to insignificant levels approaching a zero mortality and serious injury rate; at a minimum, this requires that the rate of incidental mortality and serious injury is at the lowest level that is technologically and economically practicable."

A problem with such an adopting such an approach when implementing section 118 of the MMPA, however, is that, while Congress adopted a "technologically and economically practicable" approach for the ETP yellowfin tuna fishery in 1981, it effectively abandoned that approach in 1984 when it established an annual statutory quota of 20,500 for that fishery. Congress reduced the quota again in 1992 when through the International Dolphin Conservation Act; there, it added a new section 306 to the MMPA in which the quota was reduced to 1000 for 1992, and 800 from January 1, 1993 to March 1, 1994. It also required that, for each year after 1992, dolphin mortality must decrease by a "statistically significant amount." Under these new requirements, the ETP yellowfin tuna fishery was forced to stop fishing in February of 1994 because it was approaching a take of 114 dolphins, which was statistically significantly less than the 115 it took in 1993. These statutory limits on dolphin mortality clearly indicate that, even for the ETP yellowfin tuna fishery, the 1981 approach using "technologically and economically practicable" methods a questionable method of achieving the ZMRG.

Some commenters proposed a definition where "zero equals zero" and believed that fisheries should be required to reduce their incidental mortality and serious injury of marine mammals to zero. There are two main problems with this approach: (1) It does not consider a "rate" of take as required by the ZMRG, and (2) this option could result in severe curtailment or complete cessation of fishing operations, even for fisheries that had only a remote likelihood of marine mammal incidental take.

In the proposed rule, the definition of ZMRG is proposed to be based on 10 percent of PBR. Comments on the preferred definition and the options presented are specifically encouraged.