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United States Postal service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW., Washington, DC 20554.

65. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the filing window at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket numbers, in this case, Docket No. 03-128), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC 20554.

66. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC 20554 (telephone 202-863-2893; facsimile 202-863-2898) or via e-mail at qualexint@aol.com. Commission staff will forward copies of all comments received to the Council and the Conference.

67. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with

§ 1.48 and all other applicable sections of the Commission's rules. *See* 47 CFR 1.48. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage that parties track the organization set forth in the NPRM in order to facilitate our internal review process.

68. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554 (telephone 202-863-2893, facsimile 202-863-2898) or via e-mail qualexint@aol.com. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov.

IV. Ordering Clauses

69. It is ordered, pursuant to sections 1, 4(i), 303(q), 303(r), 309(a), 309(j) and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(q), 303(r), 309(a), 309(j) and 319, section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f, and § 800.14(b) of the rules of the Advisory Council on Historic Preservation, 36 CFR 800.14(b), that this Notice of Proposed Rulemaking is hereby adopted.

70. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

71. The Wireless Telecommunications Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Practice and procedure.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for 47 CFR part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.1307 is amended by revising paragraph (a)(4) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

(a) * * *

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places. (*See* 16 U.S.C. 470w(5); 36 CFR parts 60 and 800.) The National Register is updated in the **Federal Register**. To ascertain whether a proposed action may affect properties that are listed or eligible for listing in the National Register of Historic Places, an applicant shall follow the procedures set forth in the rules of the Advisory Council on Historic Preservation, 36 CFR part 800, as modified and supplemented by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, Appendix B to part 1 of this chapter, and the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, Appendix C to part 1 of this chapter.¹

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[FR Doc. 03-17415 Filed 7-8-03; 8:45 am]

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¹ The FCC intends to add Appendices B and C to part 1 when this proposed rule is finalized.

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 229**

[Docket No. 030630163-3163-01, I.D. 052303F]

RIN 0648-AR15

Authorization for Commercial Fisheries under the Marine Mammal Protection Act of 1972; Zero Mortality Rate Goal

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments

SUMMARY: NMFS is considering options for defining the Zero Mortality Rate Goal (ZMRG), which is the requirement for commercial fisheries to reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate, as identified in the Marine Mammal Protection Act (MMPA). To evaluate progress toward this goal, NMFS is promulgating regulations to identify what levels of incidental mortality and serious injury would satisfy the goal of insignificant levels approaching a zero rate. Options for such mortality and serious injury levels are described, and NMFS solicits public comments on these options and on other aspects of the ZMRG.

DATES: Comments must be received by September 8, 2003.

ADDRESSES: Send comments to Chief, Marine Mammal Conservation Division, Attn: ZMRG, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be faxed to 301-713-0376.

FOR FURTHER INFORMATION CONTACT: Thomas Eagle, Office of Protected Resources, 301-713-2322, ext. 105, Tom.Eagle@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

Section 118(b) of the MMPA (16 U.S.C. 1387(b)), which was enacted as part of the MMPA Amendments of 1994 (Pub. L. 103-238, 108 Stat. 532), is entitled "Zero Mortality Rate Goal" and requires commercial fisheries to "reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate" by April 30, 2001.

The MMPA also requires the Secretary of Commerce (whose responsibilities under the MMPA have been delegated to NMFS) to review the progress of commercial fisheries toward this goal and to report to Congress on the results of this review by April 30, 1998. If, after the review, NMFS determines that the rate of incidental mortality and serious injury of marine mammals in a commercial fishery is above insignificant levels approaching a zero mortality and serious injury rate, NMFS must take appropriate action under section 118(f) of the MMPA. The report and regulations have not yet been completed.

Section 118(f) establishes take reduction plans as the mechanism NMFS must use to reduce the taking of marine mammals incidental to commercial fishing. NMFS is directed to develop and implement a take reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a Category I (frequent incidental mortality or serious injury of marine mammals) or II (occasional incidental mortality and serious injury of marine mammals) fishery and may develop and implement a plan for any other marine mammal stock that interacts with a Category I fishery, which NMFS determines has a high level of mortality and serious injury across a number of such marine mammal stocks. A strategic stock of marine mammals is a marine mammal stock that is listed as threatened or endangered under the Endangered Species Act (16 U.S.C. 1531, *et seq.*), designated as depleted under the MMPA, or for which human-caused mortality exceeds the stock's Potential Biological Removal level (PBR). PBR is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. PBR is calculated as the product of the minimum population estimate of the affected stock (N_{min}); one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (R_{max}); and a recovery factor (RF) between 0.1 and 1.0 (the definition is expressed in the following simple equation: $PBR = N_{min} * 0.5R_{max} * RF$, see MMPA section 3(20); 16 U.S.C. 1362(20)).

Section 118(f)(2) of the MMPA includes two goals of a take reduction plan. The immediate goal of a take reduction plan is to reduce, within 6 months of implementation, the incidental mortality and serious injury of marine mammals incidentally taken in the course of commercial fishing

operations to levels less than the potential biological removal (PBR) level of all affected marine mammal population stocks. The long-term goal of a take reduction plan is to reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within 5 years of implementation, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans. Section 118(f)(3) establishes priorities for developing and implementing take reduction plans if funds are insufficient to develop and implement plans for all stocks that interact with Category I or II fisheries.

When viewed in its entirety, there are several parts of MMPA section 118 related to the ZMRG. First, the MMPA identifies a target level of mortality and serious injury (insignificant levels of mortality and serious injury approaching a zero mortality and serious injury rate) and a date by which commercial fisheries should reach that target (section 118(b)(1)). Second, the MMPA requires NMFS to complete a review of fisheries' progress toward the ZMRG and to report the results of this review to Congress. The report must also identify any fishery for which additional information is necessary to accurately assess the level of incidental mortality and serious injury of marine mammals in the fishery. Third, there is a mechanism (take reduction plans) to reduce incidental mortality and serious injury rates to the target levels (section 118(b)(4), (f)(1) and (2)), which includes specific considerations (available technology, economic feasibility, and existing fishery management plans) that must be taken into account in achieving the long-term goal (section 118(f)(2)). Furthermore, in section 118(f)(3), which identifies priorities for the development and implementation of take reduction plans, Congress recognized that there may not be adequate funding to convene all the necessary take reduction teams at once.

In August 2002, several organizations filed suit against NMFS alleging that NMFS failed to meet requirements of MMPA section 118. These organizations and NMFS negotiated a settlement agreement that requires, among other things, for NMFS to define the ZMRG through regulation and to submit the report to Congress as required by section 118(b)(3). The court approved a settlement agreement under which NMFS would submit this advance notice of proposed rulemaking to the **Federal Register** by the end of June 2003 and complete the regulations and

the report to Congress by the end of June 2004.

History of the ZMRG

When the MMPA was enacted in 1972, the ZMRG was directed solely at the yellowfin tuna purse seine fishery in the Eastern Tropical Pacific Ocean (ETP), where participants in the fishery deliberately encircled dolphins to catch tuna. Hundreds of thousands of dolphins were being killed each year in the course of this fishing practice. Since 1972, Congress addressed the ZMRG several times from 1972 to 1997, and a brief history of Congressional action and guidance related to ZMRG is presented below.

The MMPA of 1972 (Public Law No. 92-522, 86 Stat. 1027)

Congress developed the legislative guidance for protecting marine mammals and defining the ZMRG in response to unsustainable mortality levels. The House committee noted that it was not their intent to shut down or significantly curtail the activities of the tuna fleet so long as the Secretary of Commerce "is satisfied that the tuna fishermen are using the best available technology to assure minimal hazards to marine mammal populations" (H.R. Rep. No. 92-707, at 24 (1971)). The Senate added that regulations should be imposed "as soon as practicable to minimize marine mammal fatalities through the use of currently available technology..." (S. Rep. No. 92-863, at 6 (1972)). The Senate report included guidance that, "while it should be the goal of Congress and the Executive eventually to eliminate totally the killing of porpoises, present technology is not adequate to the task." House and Senate Conferees agreed on a provision in MMPA section 101(a)(2), 16 U.S.C. 1371(a)(2), as follows: "In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate." (H. R. Conf. Rep. No. 92-1488, at 5 (1972)). In the Joint Explanatory Statement the report provided, "...the objective of regulation would be to approach as closely as is feasible the goal of zero mortality and injury to marine mammals...It may never be possible to achieve this goal, human fallibility being what it is, but the objective remains clear." (H. R. Conf. Rep. No. 92-1488 at 23)

In its original form, the ZMRG was directed at the ETP tuna fishery but was sufficiently broad that it could include other fisheries in waters under U.S.

jurisdiction. The ZMRG guided NMFS to regulate the tuna fleet to minimize incidental mortality immediately to the extent that the current technology would allow; however, neither NMFS nor the industry could be satisfied with that effort and should continue to strive to eliminate incidental mortality of marine mammals in the fishery. In the regulation of the tuna fleet, however, NMFS could not significantly curtail fishing activities if fishers were using the best available technology. Thus, the original ZMRG contained the following elements: immediate reduction of incidental mortality to the extent that current technology would allow, economic consideration of regulating fishing operations, and the long-term necessity to continue technological improvement for applying to future fishing operations.

MMPA Amendments of 1981 (Public Law No. 97-58, 95 Stat. 979)

In developing the amendments to the MMPA in 1981, the House committee noted successes of the MMPA, including, "In the area of reducing the incidental take of porpoises in tuna fishing operations, for example, the number of porpoises killed has dropped from an estimated 368,000 animals in 1972 to an estimated 15,303 porpoises in 1980." (H. R. Rep. No. 97-228 at 11 (1981)). The report explained that an amendment to MMPA section 101(a)(2) was being made to clarify that ZMRG "is satisfied in the case of the purse seine fishery for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable." (H. R. Rep. No. 97-228 at 17) The "best techniques" approach was reaffirmed in 1984 when Congress reauthorized the MMPA (H. R. Rep. No. 98-758 at 8 (1984)).

The House committee declined, however, to modify ZMRG for other commercial fisheries. The committee recognized that other fisheries (citing the foreign high seas salmon gillnet fishery as an example) had not developed new techniques and equipment for reducing incidental mortality. Therefore, the goal in MMPA section 101(a)(2) would remain unchanged for other commercial fisheries "to stimulate new technology for reducing the incidental taking of marine mammals." (H. R. Rep. No. 97-228 at 17-18 (1981)).

MMPA Amendments of 1988 (Public Law No. 100-711, 102 Stat. 4755)

In the Interim Exemption for Commercial Fisheries under MMPA

section 114, 16 U.S.C. 1383a, Congress retained the ZMRG as an objective of a regime to govern interactions between marine mammals and commercial fishing operations other than the commercial yellowfin tuna fishery (H. R. Rep. No. 100-970 at 21 (1988), S. Rep. No. 100-592 at 16 (1988)). The 1988 Amendments also required the Marine Mammal Commission to recommend guidelines to govern the incidental taking of marine mammals in the course of fishing operations after the interim exemption expired. The Commission's guidelines (Recommended Guidelines to Govern the Incidental Taking of Marine Mammals in the Course of Commercial Fishing Operations After October 1993, July 1990) maintained the ZMRG as an important component of the MMPA, but did not present additional insight into the meaning of insignificant levels approaching a zero mortality and serious injury rate. The Commission's guidelines provided a quantitative approach for evaluating whether or not marine mammal mortality was having a negligible effect on the affected population and included an impact whose effect lasted for less than one year or one that would cause less than a 10 percent increase in time it would take a depleted stock to reach its maximum net productivity level. The first of these two criteria may be appropriate for a one-time activity; however, commercial fishing is repeated annually, and some level of incidental mortality is likely to continue after one year. The second criterion, no more than a 10 percent delay in recovery of a depleted stock, addresses the annual level of incidental mortality and serious injury to assess the effects of continuing fishery interactions with marine mammals. However, this approach applies to the recovery of depleted stocks, and not all stocks are depleted. Consequently, this criterion would not necessarily be applicable to all stocks, and an additional criterion would have to apply to those cases.

International Dolphin Conservation Act of 1992 (Public Law No. 102-523, 106 Stat. 3425)

Congress passed the International Dolphin Conservation Act of 1992, which, among other things, prohibited U.S. vessels from setting nets on or to encircle dolphins to catch tuna and limited dolphin mortality from U.S. vessels to specific numbers for specific periods. In doing so, Congress reversed its course for reducing dolphin mortality in the ETP and, thus, cast some question on legislative intent regarding the ability of the "best

available technology" standard to meet the ZMRG.

MMPA Amendments of 1994 (Public Law No. 103-238, 108 Stat. 532)

The legislative history for the MMPA amendments of 1994, which enacted MMPA section 118, reiterates the statutory language for ZMRG and does not expand on what it means (See H. R. Rep. No. 103-439, at 37 (1994); S. Rep. No. 103-220 at 16 (1994)). Importantly, these amendments included a specific date (7 years following enactment or April 30, 2001) by which commercial fisheries had to reduce incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate.

The International Dolphin Conservation Program Act of 1997 (Public Law No. 105-42, 111 Stat. 1122)

Congress amended the MMPA again in 1997 to establish a new dolphin conservation program for the tuna fishery. The House Committee on Resources noted that, "while current law focuses on techniques of reducing dolphin bycatch, the alternative fishing practices exacerbate fishing pressure on other sensitive marine populations." (H. R. Rep. No. 105-74, Part I at 15 (1997))

This set of amendments to the MMPA did not specifically mention "insignificant levels approaching a zero mortality and serious injury rate". It did, however, authorize entering into a binding international agreement to establish a total dolphin mortality limit of 5,000 with an objective of progressively reducing dolphin mortality to a level approaching zero by setting annual limits (see MMPA section 302(1)). Furthermore, the 1997 amendments established stock-specific annual mortality limits (starting in 2001) of less than or equal to 0.1 percent of the minimum population estimate of the stock (section 302(3)). This stock-specific mortality limit is the mathematical equivalent of 10 percent of PBR for a cetacean stock of unknown or depleted status when using the default values for net productivity and the recovery factor.

The 1997 amendments required that all sets on dolphins must cease for the applicable fishing year if a mortality limit is exceeded and required the establishment of a per vessel annual mortality limit (MMPA section 302(4) and (7)); thus, high levels of mortality by a single vessel would not affect operations of other vessels that are not taking too many dolphins. Furthermore, the goal of eliminating dolphin mortality beyond the insignificant levels must be accomplished through a system

of incentives rather than regulation of fishing activity (MMPA Section 302(8)). As a result of these changes, the MMPA now includes a regulatory framework for reducing mortality to levels below dolphin mortality limits (which may be interpreted to be "insignificant levels") and includes further reductions to meet the ultimate goal of eliminating dolphin mortality to be accomplished through incentives.

Although the 1997 amendments made no explicit reference to the ZMRG, at least one constituent group noted the relationship between stock-specific mortality limits and the long-term goal of reducing incidental mortality and serious injury to a zero rate. In their written statement during hearings on the 1997 amendments, the Center for Marine Conservation (now known as the Ocean Conservancy) stated, "While any human-caused dolphin mortality is undesirable and recognizing that our objective is to eliminate dolphin mortality, the great majority of independent and government marine mammal scientists consider mortality levels of less than 0.1 percent to have a "negligible impact" on the dolphin stocks and to meet the MMPA's zero mortality rate goal." (Transcript of the "Hearing Before the Subcommittee on Oceans and Fisheries of the Committee on Commerce, Science and Transportation, United States Senate, One Hundred Fifth Congress, First Session, May 14, 1997).

ZMRG Concepts in Use

On June 16, 1995 (60 FR 31666), NMFS proposed regulations to implement provisions of MMPA section 118. In that proposed rule, NMFS stated that a fishery could have satisfied the requirements of ZMRG in two ways. First, mortality and serious injury of marine mammals incidental to that fishery, in combination with all other fisheries, was no more than 10 percent of PBR of the affected stocks of marine mammals. Second, in those cases where total fishery mortality was above 10 percent of PBR for one or more stocks of marine mammals, a single fishery was responsible for the removal of one percent or less of the PBR of any stock of marine mammals. The definition of the ZMRG in the proposed rule was related to proposed regulations for classifying fisheries so that only those fisheries that had achieved insignificant levels of incidental mortality and serious injury would be in Category III. NMFS related ZMRG and fishery classification in this manner because take reduction plans are the mechanism to reduce incidental mortality and serious injury to insignificant levels,

and Category III fisheries are not subject to take reduction plans.

When NMFS published its final rule (60 FR 45086, August 30, 1995) implementing MMPA section 118, these provisions related to the ZMRG were omitted. NMFS noted in the final rule only that the definition of ZMRG had been removed because the agency was still considering what would be an appropriate goal.

The proposed rule using 10 percent of PBR was based upon preliminary simulation models investigating a level of mortality and serious injury that would not delay recovery of a depleted stock by more than 10 percent of the time it would take to recover if the incidental mortality were not occurring. NMFS used these preliminary models as the scientific background for its description of fisheries in stock assessment reports as to whether the level of incidental mortality and serious injury rate of the affected stock of marine mammals "is insignificant and is approaching a zero mortality and serious injury rate." (MMPA section 117(a)(4)(D); 16 U.S.C. 1386(a)(4)(D))

Subsequent, more complete, simulation modeling revealed that annual mortality of 10 percent of a stock's PBR or less would, indeed, not delay the stock's recovery by more than 10 percent; however, for some stocks, particularly those endangered species with a recovery factor of 0.1, a higher level of mortality would not delay recovery by more than 10 percent. Thus, it appeared that the use of 10 percent of PBR in a final rule could result in over-regulation of some fisheries.

Although it was not used in a regulatory program, NMFS continues to use a value of 10 percent of a stock's PBR as a criterion in the stock assessment reports to evaluate whether incidental mortality is at insignificant levels approaching a zero mortality and serious injury rate and will continue to do so until a final rule defining the threshold for insignificant levels of mortality and serious injury is completed. The stock assessment reports have no regulatory role; therefore, a conservative value of "insignificant levels" within these reports has no adverse impact on fisheries.

Application of ZMRG to Reducing Bycatch in Commercial Fisheries

To evaluate whether or not commercial fisheries have attained the ZMRG, NMFS must consider at least two questions related to MMPA section 118(b) and (f). First, what is the level of mortality and serious injury for each stock of marine mammals that could be

considered an insignificance threshold (T_{ins}), below which incidental mortality and serious injury can be considered insignificant? Second, if a fishery or group of fisheries has a level of mortality greater than this T_{ins} and available technologies would not allow further reductions within the feasible economics of that fishery, could NMFS determine that these fisheries had met the ZMRG?

Insignificance Threshold

NMFS is considering three options to estimate T_{ins} for each stock of marine mammals. When incidental mortality and serious injury is below T_{ins} for a stock of marine mammals, then that level of mortality and serious injury would be insignificant to the affected stock. Table 1 summarizes each option and identifies arguments for and against each option. For each option, Table 1 also summarizes the number of fisheries that would have mortality and serious injury above the T_{ins} for one or more stocks of marine mammals, and it summarizes the number of marine mammal stocks for which the T_{ins} would be exceeded by mortality and serious injury incidental to commercial fisheries.

Each option is a mathematical equation that may not be applicable to every stock of marine mammals. These equations may use default or assumed values for population growth rates, and these values may not reflect the actual growth rates for the stock. Therefore,

NMFS would evaluate the T_{ins} for each stock of marine mammals and adjust them as necessary to account for case-specific situations, such as declining or very small populations.

Available Technology and Economic Feasibility

NMFS must also consider options for applying the available technology and economic feasibility considerations required by section 118(f)(2) of the MMPA for reducing incidental take to insignificant levels of mortality and serious injury approaching a zero mortality and serious injury rate. A first option would be to accept the statement in MMPA section 118(b)(1) that fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate. Using this approach, available technology and economic feasibility would not be considered in evaluating whether or not a fishery had achieved the ZMRG. However, available technology and economic feasibility would have to be considered in developing and implementing a take reduction plan to reduce incidental mortality and serious injury toward insignificant levels approaching a zero mortality and serious injury rate.

A second option would be to incorporate available technology and economic feasibility into an initial assessment of whether or not fisheries had achieved the ZMRG by the statutory

due date. If incidental mortality and serious injury by a commercial fishery was less than the PBR of all marine mammals but exceeded T_{ins} of one or more stocks on April 30, 2001, and existing technology would not allow further reductions of incidental mortality and serious injury in an economically feasible manner, then that fishery would have complied with the deadline specified in the MMPA. If, however, existing technology would allow further reduction in mortality within the constraints of economic feasibility, then that fishery would have to apply the appropriate technology to satisfy the ZMRG. This option would also allow for future development of technologies to continue to reduce incidental mortality and serious injury to insignificant levels approaching zero, and a fishery with incidental mortality above T_{ins} would have to incorporate newly developed technologies if such incorporation was economically feasible.

Comments Solicited

In the discussion above, NMFS has described a range of options for various aspects of the implementation of the ZMRG. NMFS solicits public comments about any of these options or suggestions of other options for consideration in a proposed rule. NMFS also solicits information from the public that would support the choice among options for implementing the ZMRG.

TABLE 1.—OPTIONS FOR THE INSIGNIFICANCE THRESHOLD

Option	Option 1 10 percent of PBR	Option 2 10 percent Delay in Recovery	Option 3 0.1 percent N_{min}^1 (cetaceans); 0.3 percent N_{min} (pinnipeds)
Definition	Mortality and serious injury is less than 10 percent of the PBR level.	Mortality and serious injury would not cause more than a 10 percent delay in recovery..	Mortality and serious injury is less than 0.1 percent of the minimum population estimate of a stock of cetaceans and 0.3 percent of a stock of pinnipeds
		Mortality and serious injury is less than 0.2 percent of the minimum population estimate of a stock for cetaceans and 0.6 percent for pinnipeds ² .	Mortality and serious injury would not cause more than a 5 percent delay in recovery
		Would maintain populations at or above 90 percent of the carrying capacity.	Would maintain populations at or above 95 percent of the carrying capacity
Pros	Familiar to NMFS' constituents because this definition was proposed in the 1995 proposed rule implementing section 118 of the MMPA (60 FR 31666, June 16, 1995). Easy to calculate and explain because it is based on the well understood PBR equation.	Easy to calculate because it is equivalent to the PBR equation using a recovery factor of 0.1 for all stocks. Can be calculated through modeling to take other population parameters into account (e.g., severely declining stock).	Easy to calculate because it is equivalent to the PBR equation using a recovery factor of 0.05 for all stocks Can be calculated through modeling to take other population parameters into account (e.g., severely declining stock)

TABLE 1.—OPTIONS FOR THE INSIGNIFICANCE THRESHOLD—Continued

Option	Option 1 10 percent of PBR	Option 2 10 percent Delay in Recovery	Option 3 0.1 percent Nmin ¹ (cetaceans); 0.3 percent Nmin (pinnipeds)
Cons	Consistent with current definition for Category III fishery, such that the List of Fisheries would provide an easy metric for which fisheries have met T _{ins} .	Consistent with the Marine Mammal Commission's recommendation for determining "negligible impact" related to the take of threatened or endangered marine mammals ³ .	Consistent with ETP dolphin standard for T _{ins} , which is an "insignificant" metric specifically defined by Congress
		Consistent application across all stocks because the recovery factor is set as the same number for all stocks..	Consistent application across all stocks because the recovery factor is set as the same number for all stocks
			T _{ins} is always less than PBR level
			Would allow for flexibility in relationship between T _{ins} and negligible impact under 101(a)(5)(E), such that negligible impact could be greater or less than T _{ins} depending on population parameters circumstances
Cons	May lead to overly conservative levels of protection for certain endangered species, whose PBR levels are already set at biologically insignificant levels.	For endangered species, T _{ins} = PBR level, which may be perceived as providing less protection for endangered stocks than for other stocks, even though the PBR for endangered stocks is already set at biologically insignificant levels.	May be perceived as providing less protection for endangered stocks than for other stocks, even though it reduces the PBR for endangered species (already insignificant due to the use of a recovery factor or 0.1) by 50 percent
		Not consistent with the definition of a Category III fishery, such that the definition of a Category III fishery on the List of Fisheries would need to be changed to provide an easy metric for which fisheries have met T _{ins} .	May be too restrictive for stocks at their optimum sustainable population level by setting the T _{ins} for such stocks at 5 percent of their PBR level.
		Does not allow for flexibility in the relationship between T _{ins} and section 101(a)(5)(E) of the MMPA, such that other population parameters could not be taken into account in making a negligible impact determination, potentially making it illegal for certain fisheries to operate.	
			

NUMBER OF CATEGORY I AND II FISHERIES INTERACTING WITH ONE OR MORE STOCKS OF MARINE MAMMALS FOR WHICH INCIDENTAL MORTALITY EXCEEDS T_{ins}

Atlantic	18	18	18
Pacific	8	8	8
Alaska	13	3	6

NUMBER OF MARINE MAMMAL STOCKS FOR WHICH INCIDENTAL MORTALITY EXCEEDS T_{ins}

Atlantic	15	13	14
Pacific	11	8	10
Alaska	6	2	4

1. Nmin is an abbreviation for the minimum estimated abundance for a population stock of marine mammals.

2. The calculations for estimating the delay in recovery were based upon the PBR equation and NMFS's default values for one-half of the maximum net productivity rate (R_{max}). For pinnipeds the default value for one-half of R_{max} is 6 percent, and for cetaceans, the default value is 2 percent.

3. Marine Mammal Commission, Recommended Guidelines to Govern the Incidental taking of marine mammals in the Course of Commercial Fishing Operations after October 1993, July 1990, at 30.

Dated: July 1, 2003.

Rebecca Lent,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

50 CFR Part 600

[I.D. 062703B]

Magnuson-Stevens Act Provisions;
General Provisions for Domestic
Fisheries; Application for Exempted
Fishing Permits (EFPs)

AGENCY: National Marine Fisheries
Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA),
Commerce.

ACTION: Notification of a proposal for
EFPs to conduct experimental fishing;
request for comments.

SUMMARY: NMFS announces that the
Administrator, Northeast Region, NMFS
(Regional Administrator) has made a
preliminary determination that an
application to issue EFPs for up to 100
commercial lobster vessels, submitted
by the Maine Department of Marine
Resources (MEDMR), contains all the
information required by the regulations
governing exempted experimental
fishing under the provisions of the
Magnuson-Stevens Fishery
Conservation and Management Act
(Magnuson-Stevens Act) and, therefore,
warrants further consideration. The
Regional Administrator has also made a
preliminary determination that the
activities authorized under these EFPs
would be consistent with the goals and
objectives of the American lobster
(lobster) fishery under the Atlantic
Coastal Fisheries Cooperative
Management Act (ACFCMA) and is