

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