

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director



DATE: November 27, 1991

SUBJECT: Marine Mammals

ACTION REQUIRED

- (a) Review NMFS's revised amendments to Marine Mammal Protection Act and comment to NMFS.
- (b) Review proposed regulations for sea lion protection measures in Amendment 20/25 and comment on the proposed rule.

BACKGROUND

MMPA Amendments

NMFS has developed a preferred regime to govern interactions between marine mammals and commercial fishing operations. The Council reviewed the Draft Legislative Environmental Impact Statement (DLEIS) on this issue at the September meeting and submitted its comments to NMFS (Item C-1(a)). After receiving comments on the DLEIS, NMFS modified its draft proposal and has published a Draft Interim Proposal and is requesting comments on this document. Dr. Fox will present the final proposal to Congress on January 2, 1992.

Item C-1(b) is the interim version of the proposal for your information and review. If the Council would like to respond on this version of the proposal, it must comment to NMFS by December 20, 1991.

I have requested that someone from the Office of Protected Resources (NMFS) be available at this meeting to review the Draft Interim Proposal, including the changes incorporated after our initial review of the DLEIS.

Sea Lion Protective Measures

In September the Council took final action on Amendments 20/25, which, if approved, would establish the sea lion protection measures permanently beginning in 1992. Review by the Secretary of Commerce has commenced on these amendments. Public comment is invited through December 30, 1991. NMFS is optimistic that the final rule will be implemented by January 20, 1992.

Item C-1(c) has copies of the NMFS transmittal letter and proposed rule. The proposed rule carries forward the Council's recommendations with one important exception: the Council allowed trawling to continue for groundfish, other than pollock, within the 10 nm buffer zones in the Aleutians. The rule proposed by NMFS prohibits all trawling for groundfish within the buffer zones in the Aleutians. The Council may wish to comment on the proposed rule, including the change from your September recommendation, before the final rule is implemented.

North Pacific Fishery Management Council

Richard B. Lauber, Chairman
Clarence G. Pautzke, Executive Director

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September 23, 1991

Dr. Charles Karnella
Office of Protected Species
National Marine Fisheries Service
1335 East-West Highway
Silver Spring, MD 20910

Dear Dr. Karnella:

The North Pacific Fishery Management Council has reviewed the Draft Legislative Environmental Impact Statement on NMFS' Proposed Regime to Govern Interactions Between Marine Mammals and Commercial Fishing Operations. In general it is a very substantial document that obviously required great effort by you and your nationwide task force. The preferred alternative represents a good first step in the right direction because it acknowledges that marine mammals must be managed as part of the larger marine ecosystem shared by commercial fisheries. However, the Council shares many of the concerns raised by the Pacific Fishery Management Council in their letter to you dated September 18, 1991, and offers the following additional comments on the proposal, particularly as it relates to and will impact fisheries off Alaska.

ABR Calculation

The Allowable Biological Removal (ABR) concept is the centerpiece of the NMFS proposal. It is a controlling factor on the impacts of commercial fisheries on marine mammal populations, and is patterned closely after bycatch measures the Council uses to reduce the take of prohibited species such as crab and halibut in the groundfish fisheries off Alaska. The Council's major concern is that the formula for calculating ABR is the product of three factors, minimum population counts, maximum net productivity, and a safety factor, all of which are used very conservatively, and provide an unrealistically low and constraining ABR that has every potential to close the entire commercial fishery off Alaska.

The Council believes that ABR should be based on the best estimate of total stock size, not on the minimum stock estimate. That is, minimum estimates of abundance should be expanded to unsurveyed areas occupied by the stock using the best information available on stock distribution. Because there is an explicit safety factor in the formula for ABRs, there should be no need for additional conservatism in the estimate of population size. In addition, minimum population size can grossly underestimate actual population size, depending on the amount of data collected.

The analysis does not adequately describe the underlying population dynamics models used to predict population trends and times to recovery. Presumably, these models are similar to traditional models based on intrinsic rate of increase and carrying capacity. Some approaches to population dynamics have moved away from the notion of a fixed carrying capacity to a variable one which changes due to environmental and biological changes. Because of the difficulty in estimating a fixed carrying capacity, approaches for calculating OSP and ABR independent of carrying capacity should be considered in the DLEIS. In addition the effects of man on the maximum net productivity and carrying capacity need to be considered in estimating these factors.

The safety factor adjustment requires knowledge on the status of the current population with respect to carrying capacity, which may be difficult in some cases. One option that should be considered is a constant 0.5 safety factor, independent of population size. Another option would be a straight-line safety factor, increasing with population size. In any case, the choice of safety factor should be analyzed with respect to recovery times for the population and impacts on fisheries on a case-by-case basis.

Allocation and Preemption of the ABR

Allocation of the ABR must be regarded as a critical element of a comprehensive bycatch regime. Any mechanism established to distribute the ABR in the North Pacific should take into account and be consistent with the distribution of bycatch for halibut and crabs as well as the anticipated encounter rate by the involved fisheries. The ABR approach has great potential for confounding the Council's bycatch management regime; the two regimes must be very carefully integrated to be able to optimize the harvest of groundfish, while minimizing the takes of marine mammals and prohibited species. Conversely, the DLEIS fails to recognize the possible impacts that fisheries regulations may be having on the degree of marine mammal-fishery interactions. This needs to be examined further in the document, and in any ancillary studies concerning regulatory regimes and the status of marine mammal populations.

The large geographic distribution of many marine mammals probably dictates a multi-step process. Initially, we suggest that NMFS establish a total ABR based on the best scientific information available. NMFS should, according to the species range and historical take rates, initially allocate ABRs geographically according to the boundaries of the fishery management councils, which would then be given the lead to coordinate with their states to appropriately allocate their ABR between regional user groups. And possibly, ABRs should be managed on the basis of even smaller areas depending on the status of the marine mammal stocks in those areas. For example, the ABR may be set differently for northern sea lions in the Aleutians than off Southeast Alaska, if the status of those population segments substantially differs.

A major problem with the ABR procedure in the preferred alternative is that, under certain circumstances, it would allow subsistence or foreign takes, and takes by activities unrelated to fisheries, such as oil and gas operations, to preempt domestic fisheries entirely. This may happen even if the interaction of marine mammals and the preempted fishery is minimal and not likely to affect the health of the marine mammal population. Native subsistence rights in Alaska are well recognized, and the potential for preemption of commercial fisheries would lead to major confrontations. Foreign takes of marine mammals could hold our entire North Pacific fisheries hostage, unless strict international controls are imposed on all countries sharing segments of marine mammal populations that interact with our fisheries. High foreign takes potentially could be so high as to curtail even the subsistence take in our country.

At the very least, it is suggested that fisheries with "diminimus" interactions be exempted from the provisions of the proposed regime. NMFS will need to define the conditions for allowing exemptions. For example, an exemption could be granted in cases where all fishery removals amount to less than a very small proportion of the marine mammal population, or a small proportion of ABR, or a small proportion of uncontrolled removals. In these cases there is clearly little benefit to marine mammals from putting the commercial fisheries under quota management. For example, under the preferred alternative, the ABR of some 7,000 walrus would be used entirely by the subsistence take, leaving no allowance for the commercial fisheries, which are estimated to take fewer than 20 animals. In the case of northern sea lions, the situation is worse as there would be no removals allowed for commercial fisheries after subsistence and uncontrolled removals are subtracted from ABR.

If ABRs are used to control a commercial fishery, there must be mechanisms to monitor the take and enforce the regime. Incentives must be developed to encourage fishermen to fish cleanly with regard to marine mammals, and those operations with high bycatch rates need to be controlled so they will not close down the entire fishery. A mechanism might also be provided to reward those operations that help marine mammals, for example, when a vessel is used as a refuge by a sea lion escaping a killer whale.

Social and Economic Impacts

Under some alternatives, it is possible that many fisheries could be severely restricted or even prevented, causing massive social and economic dislocation. These effects are treated very lightly in the draft document, and need much more expansion. The assessment in the DLEIS of impacts on trawl fisheries off Alaska, for example, first says that they would probably not exceed their ABR allocations and would not be significantly affected under the preferred alternative. Then it goes on to say that subsistence takes of Steller sea lions may exceed the ABR, and that the trawl fisheries could be subject to significant restrictions, closures, or penalties. It concludes that these "...could result in substantial direct monetary losses to the industry, losses associated with displacement into other fisheries, and economic hardship and dislocation in many Pacific Northwest and Alaska communities that are dependent on these fisheries." The fisheries off Alaska, combined for groundfish, shellfish, herring and salmon, annually produce \$1.5 billion dollars in exvessel value, over \$3.5 billion wholesale, and provide employment for over 30,000 fishermen and 17,000 processing workers. These economic impacts need to be addressed much more comprehensively in the next draft of the DLEIS, and the impacts on State waters fisheries need to be studied also.

New Funding

And finally, there is the issue of funding to support implementation of measures proposed in the preferred alternative. Additional population assessments and surveys will be needed to provide the data necessary for determining ABR. There will have to be more monitoring and enforcement also. It may be unrealistic to expect massive new funding for these additional programs, and simply adding these programs to the NMFS Regions without major new injections of funds could be devastating to many ongoing, fishery management programs.

Toward a Viable Program

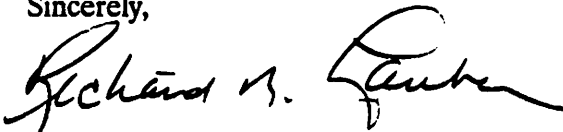
In conclusion, the North Pacific Council commends NMFS for its efforts to initiate the development of a viable program to manage marine mammals holistically within the marine ecosystem shared by commercial fisheries. We hope you will view constructively the concerns identified above, and we look forward to reviewing the next draft of the DLEIS.

We encourage NMFS to continue to move forward aggressively in developing a new regime. However, we encourage you to first examine the information that has been developed these past five years, to identify how well each element of the current program has worked, to separate out those measures that have been unsuccessful, and then proceed with designing solutions that will solve identified and proven problem areas in the interactions of marine mammals and commercial fisheries. We need this evaluation before moving that next step toward a new regime.

The North Pacific Council and the industry are fully prepared to work with you in that considered process. More immediately, the Council is taking steps to minimize the impacts of commercial fisheries under its jurisdiction on walrus and Steller sea lions. We recognize that those measures provide only temporary solutions, and that a comprehensive program is needed for the future. We encourage NMFS to seek an extension of the current regime until the long term solution can be fully developed. This issue is much too important to the commercial fisheries, and much too critical to the well being of the marine mammal populations, for a decision to be made in haste.

Thank you for seeking our comments on this most important matter.

Sincerely,

A handwritten signature in cursive script that reads "Richard B. Lauber". The signature is written in dark ink and is positioned to the right of the typed name.

Richard B. Lauber
Chairman



AGENDA C-1(b)
December 1991

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, Maryland 20910

NOV 20 1991

Dear Reviewer:

On May 24, 1991, the National Marine Fisheries Service published a proposed regime to govern interactions between marine mammals and commercial fishing operations (56 FR 23958). A substantial number of public comments on the proposed regime were received. Following a review of the comments, and consultations with the Fishery Management Councils, the environmental community, the fishing community, and other interested groups, NMFS is modifying the draft proposal to clarify various aspects and provide additional details on the elements of the proposal, and to address comments received during the consultation meetings and the comment period.

Enclosed with this letter is the interim version of the proposal for your information and review. If you have any comments on the proposal, please forward them to the address below:

Dr. Charles Karnella
Deputy Director
Office of Protected Resources
1335 East-West Highway, SSMC#1
Room 8256
Silver Spring, Maryland 20910
(301/427-2322)

Your comments should be received by this Office, no later than December 20. NMFS will address all comments received on the proposed plan in its final version.

Enclosure



REVISED PROPOSAL TO GOVERN INTERACTIONS BETWEEN MARINE MAMMALS AND COMMERCIAL FISHING OPERATIONS

INTRODUCTION

On May 24, 1991, NMFS published a proposal to govern interactions between marine mammals and commercial fishing operations (56 FR 23958) for public review and comment. During the public review period, NMFS received significant comments on various components of the proposal, from both consultation meetings and letters. Although comments were received on all aspects of the proposal, most reflected concerns about the complexity of the proposal and its application to a broad range of fisheries rather than focussing on those with significant marine mammal incidental take problems. NMFS has reviewed the comments and will submit a revised proposal to Congress in January 1992. Prior to Congressional submission, we are making this interim proposal available for additional review and comment. The proposal includes provisions for ensuring that efforts will be focussed on incidental takings that are having significant adverse effects on marine mammal stocks.

The interim proposal consists of a number of components such as stock assessment programs, potential biological removal (PBR) determinations and allocations, removal monitoring and enforcement, and the zero mortality rate goal. In particular, the process provides for the (1) goal of maintaining marine

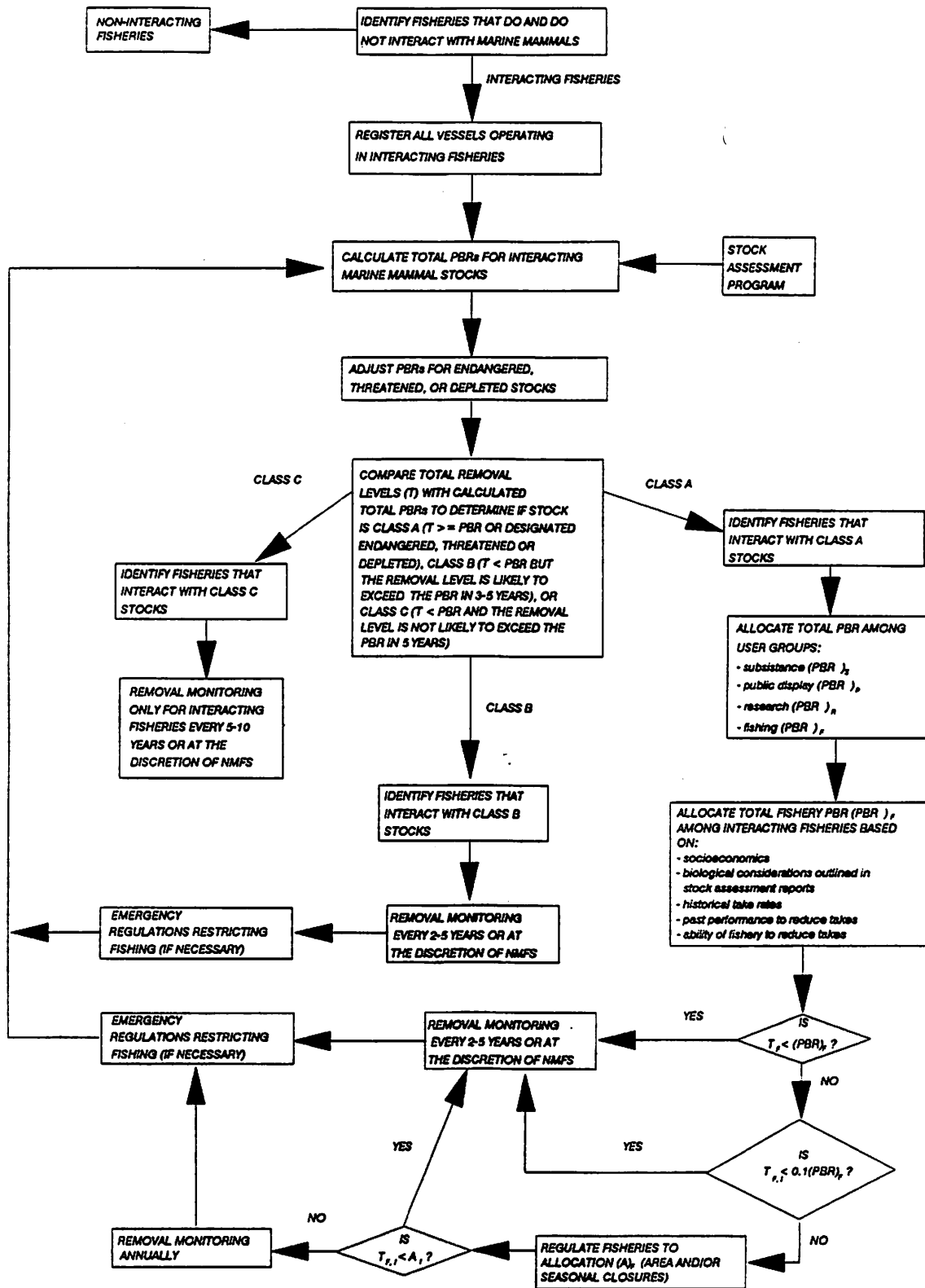
* * * DRAFT INTERIM PROPOSAL * * *

mammal stocks at their optimum sustainable population levels, (2) identification of fisheries that have removals of depleted, endangered or threatened marine mammal stocks, or have removals from stocks whose PBR is exceeded, (3) calculation of PBRs from stock assessment data, (4) allocation of PBRs among user groups, (5) tracking of marine mammal removals during fishing operations, (6) enforcement of allocations, and (7) retention of a zero mortality rate goal. The components of this proposal are presented in Figure 1.

Historical data would be used to determine which commercial fisheries interact and which do not interact with marine mammals. All vessels operating in interacting fisheries would be required to register. Vessels operating in non-interacting fisheries would not be required to register. Based on the best stock assessment data, PBRs would be calculated for each marine mammal stock that interacts with commercial fishing operations. Each interacting marine mammal stock then would be placed into one of three categories based on whether it is designated as endangered, threatened or depleted, and on the level of removals with respect to the PBR.

Class A stocks are designated as endangered, threatened or depleted, or have total estimated annual removals (T) equal to or greater than the calculated PBR. Total annual removal is defined as the sum of removals from all sources including subsistence (T_S), fishing (T_F), public display (T_P), etc.

FIGURE 1



Class B stocks are not designated as endangered, threatened or depleted and have total estimated annual removals less than the calculated PBR, but are likely to become Class A stocks within three to five years. To help determine whether a stock belongs in Class B, the following criteria will be used: (1) total annual removals are increasing and the present rate of increase is likely to exceed the calculated PBR in three to five years and, (2) stocks are declining while removal levels remain stable or exhibit an increasing trend.

Class C stocks are not designated as endangered, threatened or depleted and have total estimated annual removals less than the calculated PBR and are not likely to become Class A stocks in the next five years.

Fisheries would be categorized on the basis of the marine mammals with which they interact. Any fishery interacting with a Class A stock would be designated as a Class A fishery. A fishery not interacting with a Class A stock but interacting with a Class B stock would be designated a Class B fishery. All other interacting fisheries would be designated Class C. Fishery category designation criteria are outlined in Table 1.

Table 1. Fishery category designation criteria.

CATEGORY OF FISHERY	FISHERY DESIGNATION CRITERIA
CLASS A	<ul style="list-style-type: none"> • fisheries interacting with marine mammal stocks whose total removal level from all sources (subsistence, fishing, research, and public display) is greater than the total calculated PBR or stocks designated endangered, threatened or depleted
CLASS B	<ul style="list-style-type: none"> • fisheries interacting with marine mammal stocks whose total removal level from all sources (subsistence, fishing, research, and public display) is less than the total calculated PBR, and whose total removal level is likely to exceed the total PBR in the next three to five years
CLASS C	<ul style="list-style-type: none"> • fisheries interacting with marine mammal stocks whose total removal level from all sources (subsistence, fishing, research, and public display) is less than the total calculated PBR, and whose total removal level is not likely to exceed the total PBR in the next five years

Class A Fisheries

Under this proposal, vessels operating in Class A fisheries are required to register with NMFS. In addition, these fisheries may be subject to comprehensive monitoring on an annual basis and to restrictions to reduce the level of removals. Prior to determining the need for monitoring and/or restrictions, the PBR for Class A stocks would be allocated among the different user groups (public display (PBR_P), fishing (PBR_F), research (PBR_R), subsistence (PBR_S), etc.). The total PBR_F would be allocated among individual fisheries (A_I). Allocations would be based on the following criteria (1) socio-economic needs, (2) biological considerations outlined in the Stock Assessment Reports, (3) historical take rates, (4) past performances to reduce take, and (5) the ability to reduce takes.

The part of the PBR allocated to fishing (PBR_F) represents the maximum number of removals that would be allowed from all fisheries combined. The maximum number that an individual fishery could take would be the quota for that fishery. This number would provide a "benchmark" for determining the need for annual monitoring and/or restrictions.

If the estimated number of removals from all fisheries (T_F) in a given year is less than the fishing allocation (PBR_F), no immediate restrictions would be needed, nor would annual monitoring be required. NMFS would work with fisheries with large numbers of removals to develop ways to reduce the number of

removals. If this is not successful, then restrictions may be imposed on the fishery. Monitoring for these fisheries will be conducted intermittently, every two to five years or at the discretion of NMFS.

However, if the total removal from all fisheries (T_F) is greater than the fishing allocation (PBR_F), annual monitoring of some or all of the involved fisheries would be required and immediate restrictions may be applied to some or all fisheries. NMFS believes that monitoring efforts and restrictions should be focussed on fisheries taking more than 10 percent of the total allocation to fisheries (PBR_F). The need for annual monitoring or restrictions would be determined on a fishery-by-fishery basis. NMFS does not anticipate placing restrictions on fisheries taking less than 10 percent of the total allocation to fisheries. Monitoring of these fisheries would occur in a two to five year cycle or at the discretion of NMFS.

Fisheries with large incidental removals may be restricted to reduce the impact to the involved marine mammal stocks and may require annual monitoring. Management measures could include reduced fishing season, gear, area or time of day restrictions, or other means of reducing removals. The regulations establishing the specific management measures would be developed with input from fishermen and environmental groups through notice-and-comment rulemaking. In addition, if the expected removals are greater than the allocation (A_I), these fisheries

would be monitored on an annual basis. The monitoring program would be designed to estimate removals in a timely manner so that actions could be taken to prevent any quota from being exceeded during the year. Management measures would be triggered at a certain removal level to prevent the allocation from being exceeded. Fishermen operating in that fishery would be informed in the most expeditious manner practicable of the pending restriction(s). Notification also would be made in the Federal Register, but the restrictions would not take effect for at least five working days from the date of publication. Management measures would vary, depending upon the circumstances, which could range from a requirement of 100 percent observer coverage to a prohibition on landings or additional fishing.

Class B Fisheries

Vessels operating in Class B fisheries are also required to register with NMFS. These fisheries would not require annual monitoring. NMFS would work with Class B fisheries that remove large numbers of marine mammals to develop ways to reduce the number of removals. Class B fisheries would be monitored every two to five years or at the discretion of NMFS.

Class C Fisheries

Vessels operating in Class C fisheries would also be required to register with NMFS, and may require monitoring every

five to ten years, depending on the level of incidental removals. NMFS does not anticipate the need for management measures in these fisheries, except in unusual circumstances.

Background

Interactions between fisheries and marine mammals are a continuing problem. Marine mammals are accidentally injured or killed during certain fishing operations and, in some cases, are intentionally harassed, injured or killed to protect fishing gear, catch or personal safety. The injury and mortality of marine mammals incidental to fishing operations is an issue of concern, particularly in those cases where the marine mammal stocks are decreasing, depleted, threatened or endangered or where little is known about stock status or the level of mortality. In addition to the impacts on marine mammal stocks, interactions between marine mammals and fisheries result in damage and loss of fishing gear and reduced value of catch.

Prior to 1988, the Marine Mammal Protection Act (MMPA) established a general moratorium on the taking and importing of marine mammals with certain exceptions, including provisions for allowing non-depleted marine mammals to be taken incidental to commercial fishing operations. Sections 101(a)(2), 101(a)(4) and 104 of the MMPA and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR 216.24) required that either a small take exemption or a general incidental take permit be

obtained to authorize the incidental taking of non-depleted marine mammals in the course of commercial fishing operations within the U.S. Exclusive Economic Zone (EEZ). General permits could be issued under sections 101(a)(2), 103 and 104 if NMFS or the U.S. Fish and Wildlife Service (FWS) determined that (1) the involved stocks were within their OSP levels, (2) such takings would not disadvantage the stocks involved, and (3) issuance of the permit would be consistent with the purposes and policies of the MMPA. Small take exemptions could be granted for unintentional takes if NMFS or FWS (1) determined that the total of the authorized taking would have a negligible impact on the stock and (2) provided guidelines pertaining to the establishment of a cooperative system among involved fishermen to monitor and report such taking were issued.

In 1987, Alaska Native fishing groups and environmental organizations challenged a MMPA general permit issued to the Federation of Japan Salmon Fisheries Cooperative Association for the taking of Dall's porpoise because other marine mammals for which a permit could not be issued (e.g., the depleted northern fur seal) would inevitably be taken (*Kokechik Fishermen's Ass'n v. the Secretary of Commerce*, 839 F.2d. 795). The District Court for the District of Columbia ruled on June 15, 1987, in favor of the plaintiffs and invalidated the permit. The U.S. Court of Appeals for the District of Columbia affirmed the District Court's decision on February 16, 1988, holding in effect that

NOAA could not issue an incidental take permit for one species of marine mammal in circumstances where unpermitted takings of another species of marine mammal would occur. The U.S. Court of Appeals also affirmed an earlier court pronouncement that, as a matter of law, the removal of even a single individual from a depleted population would disadvantage the stock and, therefore, could not be allowed.

As a result of the court's decision, NMFS determined that many existing general permits and small take exemptions could not be reissued and that some new authorizations could not be issued for foreign or domestic commercial fishing operations within the EEZ. Thus, Congress passed the MMPA Amendments of 1988 (Pub. L. 100-711). A new section 114 of the MMPA (16 U.S.C. 1383(a)) was added, establishing the 5-year Interim Exemption for certain incidental takings of marine mammals by commercial fishermen. The primary objective of this Interim Exemption was to provide a means for collecting reliable information about interactions between commercial fishing activities and marine mammals while allowing commercial fishing to continue. Based upon this and other relevant information, the Secretary of Commerce (Secretary) was directed to develop a proposal that would govern the incidental taking of marine mammals following the termination of the interim exemption program on October 1, 1993.

As required by section 114(1)(1) of the MMPA, and in order to assist NMFS in developing its proposal, the Marine Mammal

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Commission (MMC) transmitted a list of recommended guidelines to the Secretary on July 12, 1990. The MMC based its guidelines on the need for decisions authorizing incidental takes to account for (1) the status and trends of the affected species or stocks, (2) the likely impact(s) of the take, alone and in combination with other sources of mortality, on the future status of the species or stock, (3) uncertainties related to the status of affected species or stocks and the impacts of incidental taking on these species or stocks, and (4) the impacts of decisions related to the management and conservation of other resources (e.g., fish). Within these constraints, the MMC's guidelines conclude that it is appropriate to authorize the incidental taking of depleted and non-depleted species to (1) allow the ecologically sound utilization of other resources and (2) help obtain data required to manage marine mammals and marine ecosystems effectively.

NMFS incorporated most of the MMC's recommendations into the proposal to govern the interactions between marine mammals and commercial fishing operations which was published in the Federal Register on May 24, 1991 (56 FR 23958). The only significant departure in that proposal from the MMC's recommended guidelines concerns the use of Optimum Sustainable Population (OSP) to determine the level of potential biological removal. NMFS agreed with the MMC that maintaining stocks within their OSP is an important goal of the MMPA, but believes that OSP

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determinations should not be a prerequisite to allowing incidental takes. Even in 1993, NMFS will have made OSP determinations for very few of the coastal marine mammal stocks. Assessing the status of stocks relative to OSP for the remaining species will require the collection of large amounts of data over an extended period of time. Therefore, OSP determinations for most stocks will not be available for many years, even without resource constraints. NMFS proposed an approach that relied on a combination of available data and conservative assumptions to calculate a potential biological removal level when adequate data for OSP determinations is not available. The proposal also provided for a long-term stock monitoring plan to provide the missing OSP data over time.

A more detailed description of the proposal (Draft Legislative Environmental Impact Statement (DLEIS)) was developed and circulated for public comment in June 1991. NMFS is now preparing a revised proposal that addresses many of the comments received during consultation meetings and in letters, and incorporates a more detailed description of the major program areas.

Major Changes In The Proposal

The revised proposal contains substantial changes in how the proposal will be developed and implemented. A recurring theme of many comments from both the commercial fishing industry and the

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environmental community was the need to focus attention and resources on the most important problems facing marine mammal stocks. In response, the revised proposal focusses on the most important interactions between commercial fishing and marine mammal stocks. The more substantial changes to the original proposal are summarized in this section.

Optimum Sustainable Population (OSP). The discussion of OSP and major concepts relating to OSP (e.g., carrying capacity and maximum net productivity level) is more detailed than in the original proposal. The revised section on OSP also contains a discussion of how marine mammal stocks will be classified and makes clear the intent to use OSP determinations as a basis for establishing removal levels if adequate data are available.

Stock Monitoring Requirements. The revised proposal contains provisions for the development of annual research plans that would identify and begin to fill the gaps in knowledge of marine mammal stocks. Annual research plans and research results would be made available to the public.

Calculating Potential Biological Removal (PBR) Levels. The term "Allowable Biological Removal" from the original proposal was changed to "Potential Biological Removal" in the revised proposal, in order to clarify that this number represents the

total number of individuals that could potentially be removed, but not necessarily the number that would be authorized. NMFS now proposes to calculate PBRs using the minimum estimate of stock abundance for all stocks. In addition, the recovery factors NMFS proposes to use in calculating PBRs have been changed from those in the original proposal. Initially, the recovery factors were set at 0.9, 0.5, and 0.1, depending upon the status of the stock in question with respect to its carrying capacity. A number of commenters suggested that these factors were not necessary to effectively conserve marine mammal stocks. Upon reconsideration, NMFS has decided that recovery factors of 0.75 (for stocks between 1/3 and 2/3 of K) and 0.5 (for stocks below 1/3 of K) would allow marine mammal stocks to equilibrate within OSP over a reasonable time. No recovery factor would be used for stocks above 2/3 of K (i.e., within their OSP range). Recovery times using the new recovery factors are similar to those under the original proposal.

Stock Assessment Process. A new section has been added to the revised proposal in order to more clearly distinguish the scientific aspects of data gathering and assessment from the management processes of adjusting and allocating PBRs among the various user groups.

Depleted, Endangered and Threatened Stocks. The revised proposal states that the PBR for depleted stocks (designated as endangered, threatened or depleted) will be calculated under the general PBR process. Adjustment would be made to the calculated PBR based on any biological considerations necessary for population recovery as determined in the conservation/recovery planning process.

Allocation of PBRs. The two processes originally proposed for allocating PBRs among user groups and dividing the fisheries portion among commercial fishing operations have been combined and the allocation board has been eliminated. The revised proposal includes potential measures to address each source of removal, with the exception of subsistence takes, which will be subtracted from the PBR calculations. Instead of creating a new organization to allocate removals among fisheries, NMFS proposes to seek recommendations on allocations from state fishery agencies and Fishery Management Councils. Based on those recommendations, NMFS will publish proposed allocations for public review and comment. In addition, allocations will be made only for Class A stocks. Incidental removal levels for Class B and Class C stocks are less than the PBR and do not need to be allocated.

Categories of Fisheries. NMFS originally proposed to categorize fisheries in terms of the likelihood of future interactions fishery-wide. The revised proposal would first divide fisheries according to whether or not the fishery interacts with marine mammals, and then to categorize fisheries according to the marine mammal stocks with which they interact. A fishery interacting with Class A stock would be a Class A fishery. A fishery not interacting with a Class A stock, but with a Class B stock, would be a Class B fishery. All other fisheries would be Class C fisheries. Class A marine mammal stocks are those designated as endangered, threatened or depleted, or those having removals equal to or greater than the calculated PBR. Class B marine mammal stocks are not designated as endangered, threatened or depleted, and have removals less than the calculated PBR, but are likely to become Class A stocks within three to five years. Class C stocks are not designated as endangered, threatened or depleted, have removals less than the PBR, and are not likely to become Class A stocks within five years. Allocations (not to exceed the PBR) would be made only for Class A stocks. This approach to categorization would allow NMFS to focus its management proposal and available resources on problem fisheries, and reduce attention on fisheries with much less potential to disadvantage marine mammal stocks.

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User Fees. In addition to funding its proposal through a broad-based registration fee, NMFS originally proposed to assess commercial fishermen for the cost of special monitoring requirements. The revised proposal more clearly describes those circumstances where the fishing industry will bear the cost of special observer programs.

Implementation Date. While the two-year implementation period of the original proposal is retained, the revised proposal includes a "phased strategy." Removals of some species may exceed annual PBR levels in the initial years after the adoption of the proposal. The phased strategy would allow continued removals, above PBR levels, for a specified period of time by certain fisheries, gradually reducing total removals to levels below PBR.

REVISED PROPOSAL

Scope of Proposal

The scope of the proposal has not changed from NMFS' initial proposal. The NMFS proposal would apply to all commercial fishing operations under U.S. jurisdiction, with the exception of the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean (ETP), and would affect those marine mammal stocks that directly interact with these fisheries. (This proposed plan could be used in managing dolphin stocks incidentally taken in the ETP tuna purse seine fishery, but this fishery is specifically excluded from consideration by section 114 of the MMPA.) The proposal would affect other activities under U.S. jurisdiction that interact with these same marine mammal stocks, including public display, scientific research, and small takes incidental to non-fishing activities. The proposal would replace all existing provisions governing the taking of marine mammals incidental to commercial fishing, including the general permit and small take provisions.

The scope of the proposal reflects NMFS' belief that sound principles of wildlife management require that all human interactions be considered to ensure that marine mammals are not being disadvantaged. Governing only takes incidental to commercial fishing would not provide the comprehensive approach requisite to conserving marine mammal stocks as required by the MMPA. Consequently, the proposal addresses all removals from

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marine mammal stocks. "Removal," as used in this proposal, includes all serious injuries, deaths, live captures, and other withdrawals from the wild.

Comments received during the public comment period for the proposal suggested that the term "commercial fishing operations" be clarified. The current definition of "commercial fishing operation" has been retained; i.e., fishing boats for hire and any individual licensed to sell catch. Recreational fishermen would remain outside the scope of the proposal, "whether or not the fish caught are subsequently sold" (50 CFR 216.3). Recreational fishermen that interact with marine mammals should apply for a small take authorization under section 101(a)(5) of the MMPA.

Optimum Sustainable Population (OSP)

The goal and central principle of the MMPA is to maintain or restore marine mammal stocks to OSP levels. The proposed plan maintains this goal, but establishes an approach that can be applied to all species regardless of the amount or the quality of available data (in terms of precision and availability) or status of the stock. The plan is based on NMFS' belief that the removal of animals from most, but not all, marine mammal stocks may be authorized and is not inconsistent with maintaining marine mammal stocks within their OSP. The authorized level of removals associated with human activities would be dependent on the status

and growth of the stock. The proposed plan is designed so that authorized removal levels would not prevent a marine mammal stock from reaching its OSP within a reasonable time.

Under the MMPA, OSP is defined as "the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element." (MMPA Section 3(8)). In 1976 NMFS expanded this definition by regulation to mean "... a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less the losses due to natural mortality." (50 CFR 216.3). This upper range of OSP is the size of the stock at carrying capacity (K) and the lower end of the range is the size of the stock at its maximum net productivity. For marine mammals, maximum net productivity level (MNPL) is thought to be greater than 50 percent of K and has been suggested to be between 60 percent and 80 percent of K.

The comments received during the DLEIS public comment period generally indicated support for NMFS' attempt to design a marine mammal management approach based on the OSP concept. However, a

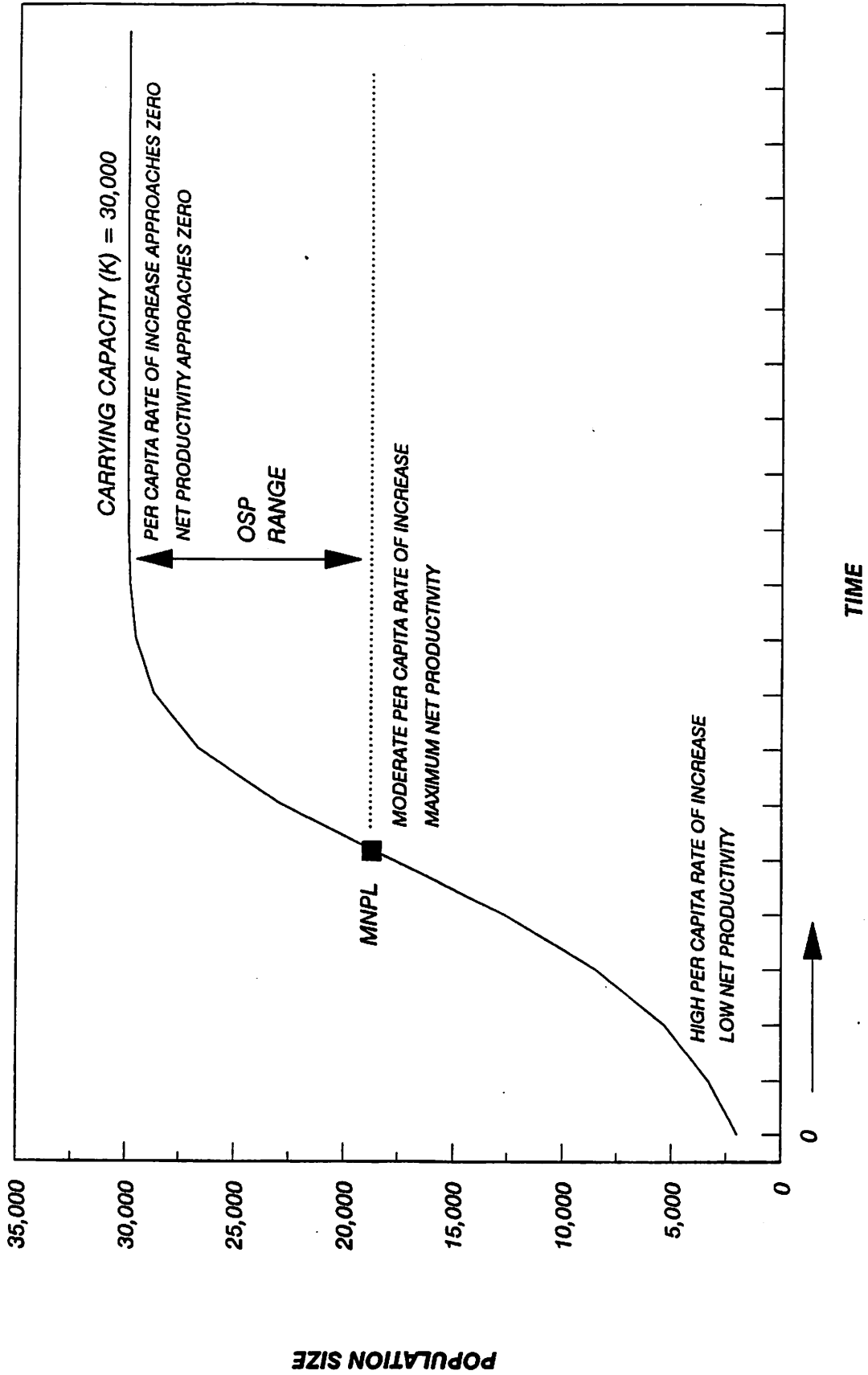
number of commenters requested clarification of OSP and related concepts, such as carrying capacity, population, and stock definition. In addition, commenters requested that the connection between these concepts and the proposal be described in greater detail. In this section, OSP and related concepts are defined, and the use of these concepts in decisions regarding the authorization of the taking of marine mammals incidental to human activities is discussed.

1. Background

Animal populations are limited in size by a suite of environmental variables, of which available food resources and habitat requirements are critical. This upper bound on population size is the current environmental carrying capacity. K is defined as the maximum population size that can be currently maintained by a particular environment (in the absence of the human exploitation of marine resources, either the species in question or resources required by the species).

The trajectory of a hypothetical population's growth is illustrated in Figure 2. At small population sizes, per capita rate of increase is maximized, but relatively few animals are being added to the population per year (net productivity) due to the small population size. As population size increases, the per capita rate of increase decreases, but net productivity (and population size) continues to increase. At higher population levels, population growth continues, but at a reduced per capita

FIGURE 2
POPULATION GROWTH OVER TIME

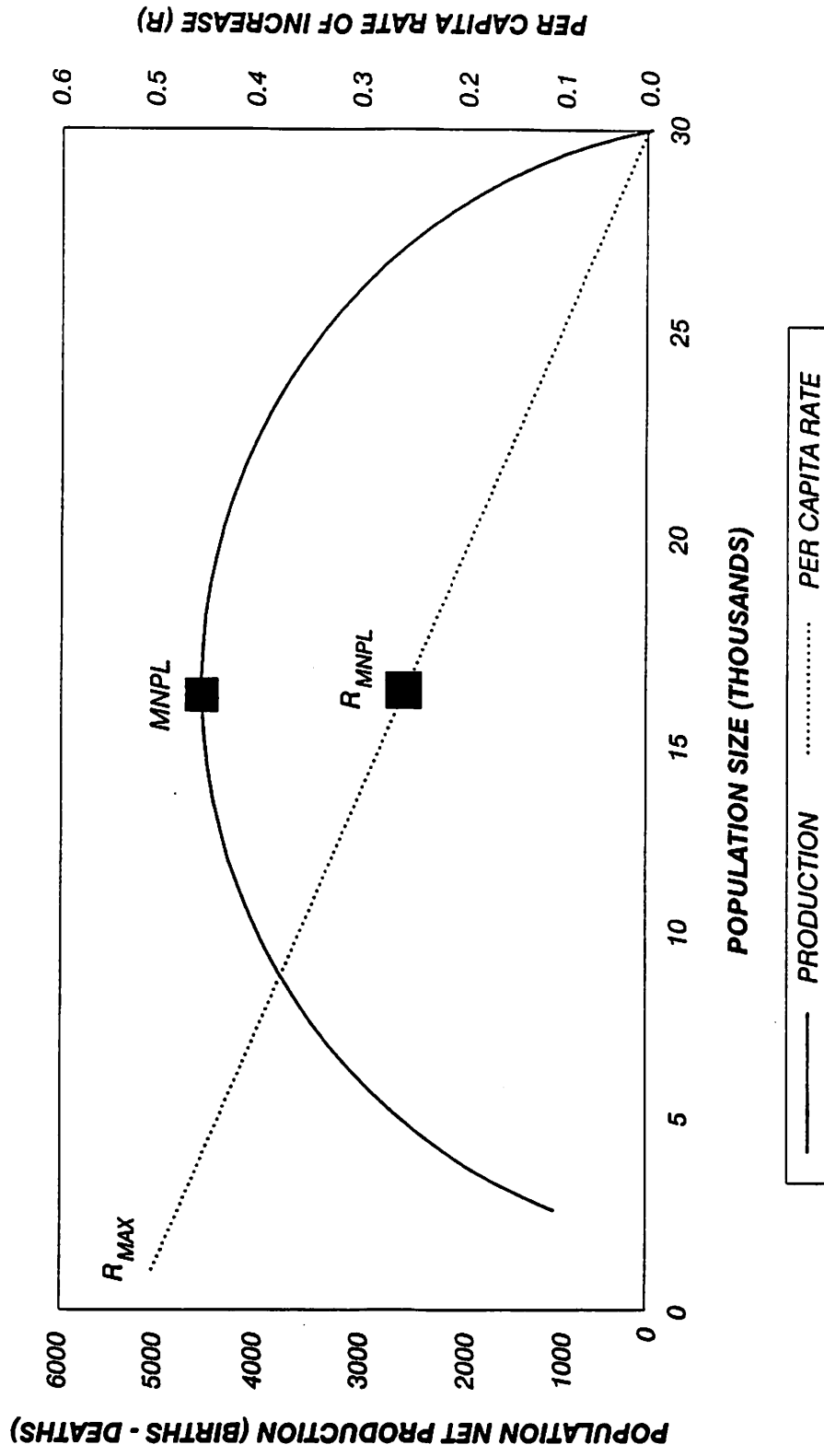


rate of increase. The population equilibrates when population size is at a level where net production equals zero, i.e., is at the carrying capacity of the environment. The population size where net productivity is greatest is called its maximum net productivity level (MNPL).

The relationship between population size, net productivity and per capita rate of increase is depicted in Figure 3. At both low and high population levels, net productivity of the population is low, approaching zero. The per capita rate of increase is maximized at low population levels and approaches zero at carrying capacity. It should be noted that maximum net productivity of the population occurs at an intermediate level of the per capita rate of increase (R_{MNPL}) and not at the maximum per capita rate of increase (R_{MAX}). When the per capita rate of increase is maximal, population size is small, resulting in minimal additions (net productivity) to the population.

Defining a stock is an essential element in making an OSP determination. The MMPA directs NMFS to conserve "species or population stocks." A population stock, as defined in section 3 of the MMPA, is a group of marine mammals of the same species or lower taxon that interbreed when mature. In this document such a group is called a stock. Stocks will be determined based on the best scientific information available, using procedures such as those described by Dizon et al. (in press). NMFS' objective is to protect unique genetic adaptations, and to allow the species

FIGURE 3
 RELATIONSHIP BETWEEN POPULATION SIZE, NET
 PRODUCTION AND PER CAPITA RATE OF INCREASE



composition of individual ecosystems to be as resilient as possible to natural and human-related perturbations to the environment. Where there are sufficient data available, PBRs and authorized removal levels will be calculated on the basis of population stocks.

NMFS believes that the proposal establishes the foundation for sound wildlife management by providing a process to determine conservative levels of removals of marine mammals when: (1) data to calculate OSP are available; (2) data to calculate OSP are not available; and, (3) the stock is designated as endangered, threatened or depleted. NMFS determined that the proposal would allow marine mammal stocks to equilibrate within their OSP range whether or not they were depleted at the inception of the proposal. The proposal would allow NMFS to establish conservative PBR levels when data are insufficient for OSP determinations. This is critical, because data required for OSP calculations are not available for many species and it may be years before reliable data are available. This approach accommodates situations in which there are insufficient data and provides for the incorporation of "new" data as they become available.

The first step, under the proposal, will be to determine the availability of data to make OSP determinations and associated stock designations. The calculation of PBRs under each data/designation scenario follows. It should be pointed out that

the equation to calculate PBR under each scenario is the same, except that a recovery factor is included for stocks below OSP and where data is insufficient to determine OSP. If the stock is designated as endangered, threatened or depleted, the PBR is calculated in the same manner, but the PBR would be adjusted as appropriate with regard to the conservation/recovery plan.

2. Stocks are Determined to be Within Their OSP Range

In those cases where sufficient information is available to determine the status of a stock relative to its OSP, quantitative OSP determinations will be made. Permissible takes for marine mammal stocks for which the OSP determination has been made and which are within their OSP ranges will be determined using the following equation:

$$(PBR_{OSP}) = (N_{MIN}) (R_{MNPL}),$$

where (PBR_{OSP}) is the Potential Biological Removal level for the stock, (N_{MIN}) is the best estimate of minimum stock abundance and (R_{MNPL}) is the per capita rate of increase at MNPL. The subscript OSP identifies this species as being within its OSP range.

3. Stock is Below OSP or Data are not Available to Calculate OSP

If the stock is shown to be depleted (i.e., below its OSP), or in the absence of adequate information to make quantitative OSP determinations, NMFS has proposed an approach that would set conservative levels of removal to ensure that a stock will

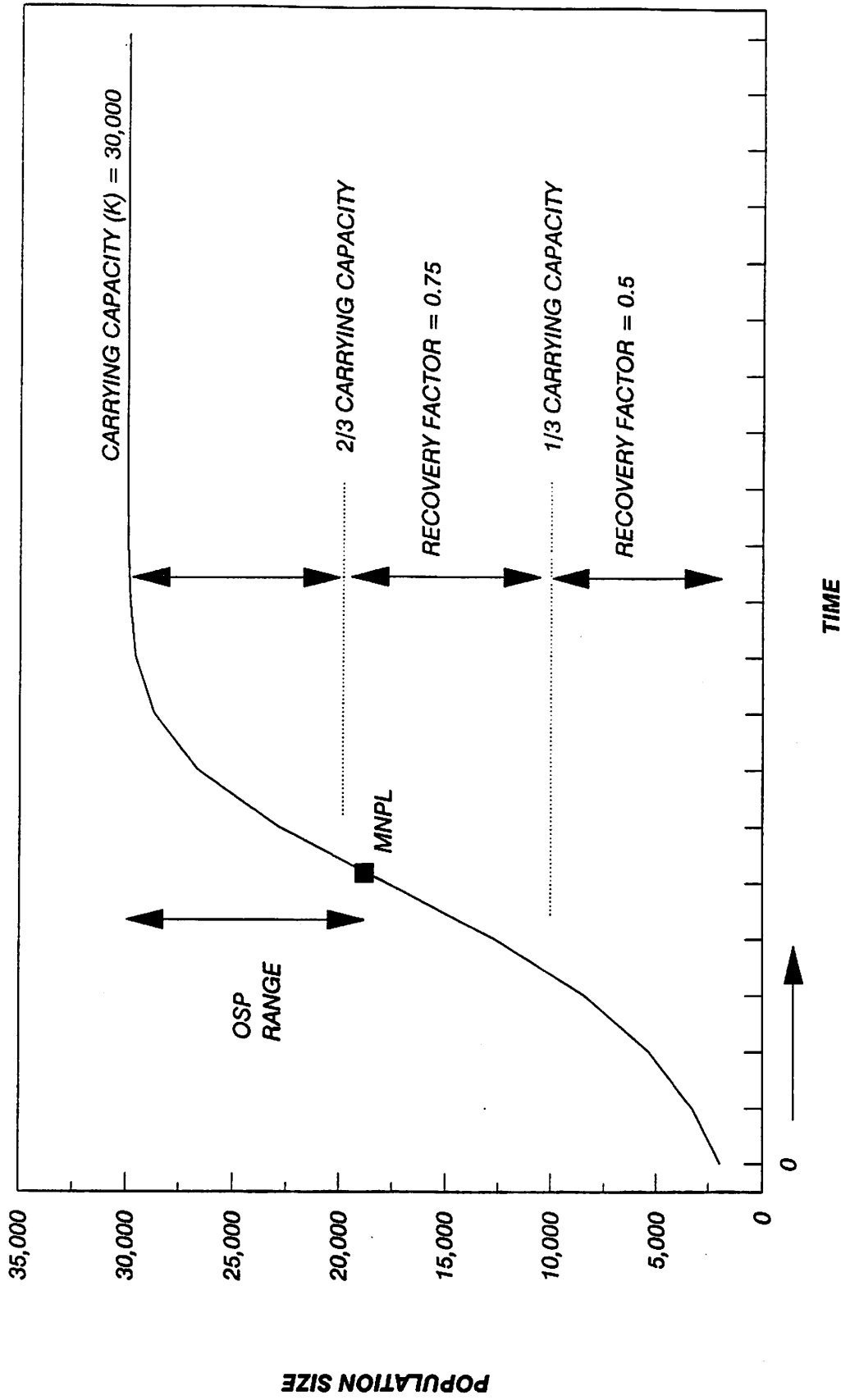
increase to the OSP level within a reasonable time or will remain within its OSP. The PBR would be calculated by multiplying the best estimate of minimum stock abundance (N_{MIN}), times the best available estimate of the per capita rate of increase at MNPL for the stock (R_{MNPL}), times a stock recovery factor (F_r):

$$(PBR_{EST}) = (N_{MIN}) (R_{MNPL}) (F_r),$$

where (PBR_{EST}) is the Potential Biological Removal level for the stock.

The proposal uses conservative default values for per capita rate of increase at MNPL when scientific information on net productivity is not known. R_{MNPL} generally ranges between 0.5 and 0.75 of the maximum per capita rate of increase. To be conservative the proposal uses the lower end of this range, 0.5. Conservative default values are based on theoretical average maximum per capita rates of increase for pinnipeds and sea otters of 12 percent, and for cetaceans and manatees of 4 percent. Under this proposal the corresponding default per capita rate of increase at MNPL would be 6 percent and 2 percent, respectively. However, if better estimates are available, they would be used. For example, based on current information, the maximum per capita rate of increase for harbor porpoise is likely to be on the order of 10 percent per year, therefore, R_{MNPL} would be 5 percent. The term F_r in the equation represents a recovery factor.

FIGURE 4
 RELATIONSHIP BETWEEN OSP AND PBR REGIMES



The recovery factor depends upon the best estimate of the status of the stock relative to the carrying capacity (K). The recovery factor would be 0.75 for stocks between 1/3 and 2/3 of K, and 0.5 for stocks below 1/3 of K. If there is no information available to make this judgement, the recovery factor would be 0.5. Figure 4 describes the relationship between population growth, OSP, and the proposed recovery factors for stocks determined to be depleted, and when data to make OSP determinations are lacking.

PBR was developed with consideration for two principal issues. First, information available for governing marine mammal-fishery interactions would include a high degree of uncertainty. For example, population estimates are likely to have coefficients of variation on the order of 20 to 30 percent and estimates of incidental mortality are even less precise for many fisheries. In the face of this imprecise information, NMFS believes that the new proposal should be conservative in establishing removal levels to help ensure that authorized takings will not disadvantage marine mammal stocks. This is why minimum abundance, rather than the best estimate, is used to calculate PBR.

The second issue was that ecosystems would be at greater risk to catastrophic failure the longer significant elements of the ecosystem are allowed to remain well below equilibrium levels. Therefore, in calculating PBR for stocks thought to be

below $1/3$ of K , half of the net productivity would be protected ($F_r = 0.5$), and for stocks between $1/3$ and $2/3$ of K , one fourth of the net productivity would be protected ($F_r = 0.75$). If stocks are known to be within their OSP, a recovery factor would not be used.

In the DLEIS, NMFS proposed to use the best estimate of minimum abundance, either the minimum count or the value of the limit of the lower 95 percent confidence interval of abundance, in calculating the PBR. This approach has not changed in the current proposal.

It should be noted that the proposed recovery factors differ from those proposed in the DLEIS (0.9 when the stock is greater than $2/3$ of K , 0.5 when stock size is between $1/3$ and $2/3$ of K , and 0.1 when stock size is less than $1/3$ of K). The proposed recovery factors still ensure that PBR will be conservative for stocks that cannot be demonstrated to be within OSP, allowing the stock to increase if abundance is below OSP despite the allowance of incidental removals. Moreover, there would be little difference in recovery time compared to the original recovery factors. Using the recovery factors described in the original proposal and calculating a worst case situation, a species with a known population size that is less than $1/3$ K with a maximum net productivity of 4 percent (cetaceans) would be expected to recover in less than 56 years. Using the revised recovery factors, under the same conditions, a species would be expected

to recover within 69 years. For known stock sizes of species that are less than $1/3 K$ with a maximum net productivity of 12 percent (pinnipeds), the recovery time would be approximately 19 years using the original recovery factors and calculating a worst case situation. Using the revised recovery factors, under the same conditions, a species would be expected to recover within 24 years.

Threatened, Endangered and Depleted Stocks

Depleted stocks are those determined to be below OSP (i.e., designated as depleted under the MMPA) or listed as endangered or threatened under the Endangered Species Act (ESA). Prior to 1988, the MMPA imposed strict prohibitions on taking depleted marine mammal stocks incidental to commercial fishing. Although PBRs will be calculated initially for depleted stocks in the same manner as for non-depleted stocks, the PBR may be adjusted to ensure that recovery of these stocks would occur within a reasonable time, using information from the Stock Assessment Report and the conservation/recovery plan and other appropriate sources.

This approach is based on the belief that in some but not all cases, incidental (not directed or intentional) removals from stocks designated as depleted under the MMPA could be allowed without further disadvantage to the stock and without

significantly delaying recovery time, provided that adequate precautions are taken.

Many commenters agreed with this assumption. For example, some species designated as depleted (e.g., northern fur seal) are sufficiently numerous or are increasing in abundance, and small numbers of removals would have a negligible effect on their persistence and recovery. Allowing removals from some depleted stocks would not prolong recovery and would avoid unnecessary restrictions or adverse economic impacts on commercial fishing that would result if no taking of depleted stocks were allowed. For severely depleted stocks (e.g., right whales), no incidental mortalities would be authorized.

Stock Assessment Program

NMFS has proposed a process for establishing PBRs for marine mammal stocks. For many stocks, data are scant, requiring the use of default values to calculate PBRs. NMFS believes that stock-specific information should, over time, replace default values. To accomplish this, NMFS has initiated a marine mammal stock assessment program to provide the information needed to make the required determinations and decisions regarding the taking of marine mammals. Elements of the program will include the development of Stock Assessment Reports, which provide data to determine OSP and PBR, and stock assessment research. NMFS believes that such a process will provide for (1) compilation and

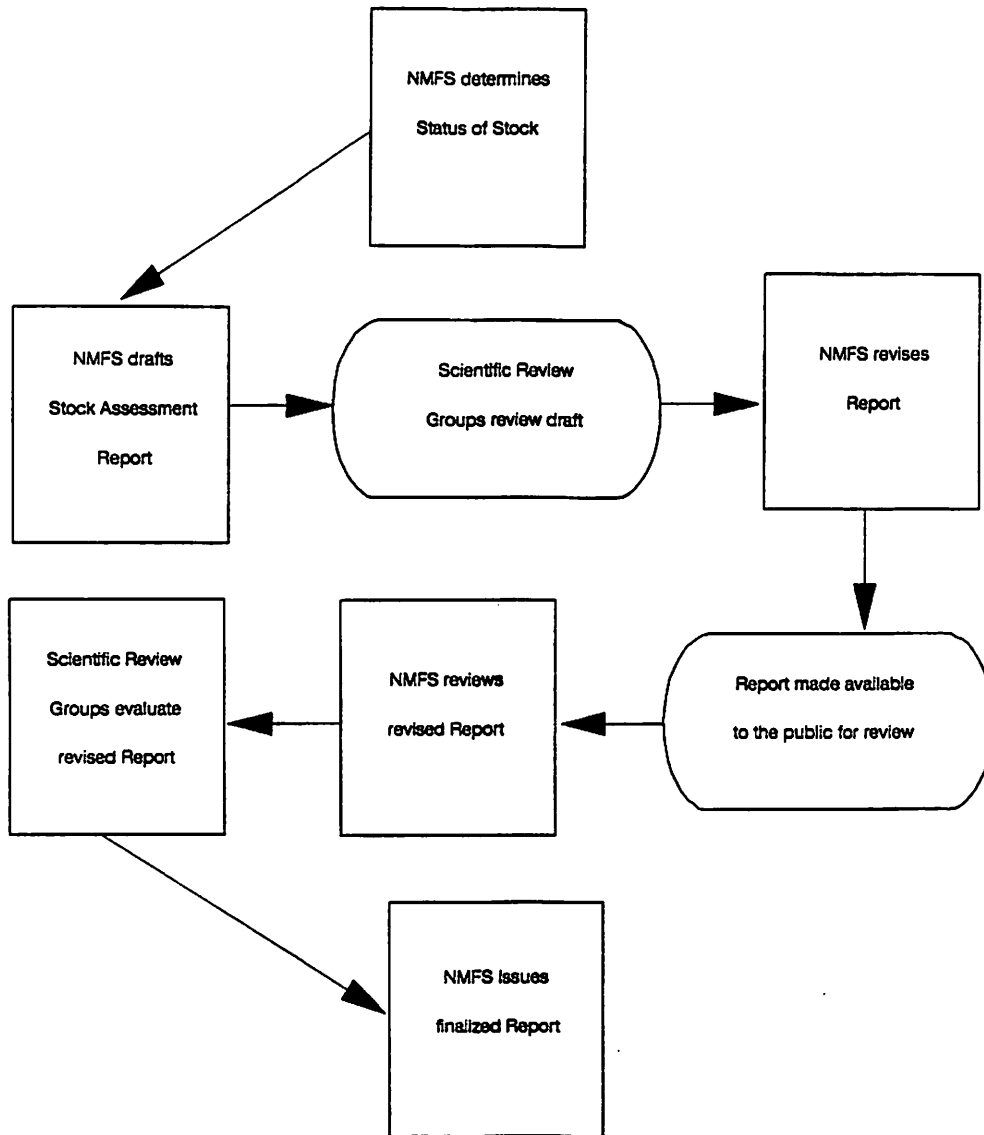
assessment of the available information on marine mammal stocks, (2) the collection of requisite data to make OSP determinations and calculate PBRs, (3) adequate scientific peer review of the results, and (4) the opportunity for public participation. In addition, the program will provide decision makers with the necessary information to make effective wildlife management decisions.

The process proposed in the DLEIS is expanded upon in this proposal and would supersede the requirements under Section 103 of the MMPA, which mandates a formal rulemaking process, including a hearing before an Administrative Law Judge under the Administrative Procedure Act.

1. Stock Assessment Reports

Commenters on the DLEIS generally supported the proposal to draft Stock Assessment Reports for all marine mammal stocks incidentally taken in commercial fisheries. These reports would be updated at least once every three years, or more frequently if new information becomes available. Draft Stock Assessment Reports would be based upon the best available scientific information and would provide (1) estimates of stock abundance (mean and minimum), (2) estimates of population demographic parameters (i.e, mortality, growth, productivity) and (3) OSP determinations (if possible), and the basis for such assessments (see Figure 5). Information contained in the Stock Assessment Reports will be used to calculate PBRs. NMFS will develop a

FIGURE 5
STOCK ASSESSMENT REPORTS



uniform format to ensure consistency among reports for different stocks, including the models, methods, and terminology used to compile the reports. The reports will also discuss any special measures believed to be needed for the conservation of the stock, such as restricting mortality by season, area, age, sex or reproductive class, or other biological considerations, and the need for protective measures, such as restrictions on non-lethal takings. These restrictions will be considered when establishing removal levels. NMFS proposes to subject the draft reports to rigorous scientific review, to provide for an independent assessment of the scientific validity of the Stock Assessment Reports before they are used in the PBR calculation or any other decision-making process. The review process would begin with the appointment of Scientific Peer Review Groups comprised of scientists from the MMC, Federal and state agencies, the academic community, and other organizations to evaluate the data contained in the draft Stock Assessment Reports. Comments received on the original proposal support the idea of independent Scientific Peer Review Groups evaluating the Stock Assessment Reports before policy decisions are made.

The draft reports would then be revised, based on the peer review, and made available for public review and comment through publication of a notice of availability in the Federal Register. NMFS would revise the report as appropriate to address comments received. The Scientific Peer Review Groups would then evaluate

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the revised reports before final Stock Assessment Reports are issued. This process would be used to elicit any additional scientific data available and to further scrutinize the scientific content of the draft reports.

This scientific and public review process would provide adequate scientific review and evaluation, and adequate opportunity for public participation in the process for determining PBRs.

2. Stock Assessment Research

NMFS proposes that a long-range research program to assess marine mammal stocks be developed and implemented to generate data on the status of marine mammal stocks that interact with commercial fisheries. Marine mammal stock assessment research is essential for providing a scientific basis for establishing whether stocks can withstand removals, determining appropriate removal levels, assessing the impacts of allowable removals on these stocks, and evaluating the efficacy of proposed or implemented management strategies.

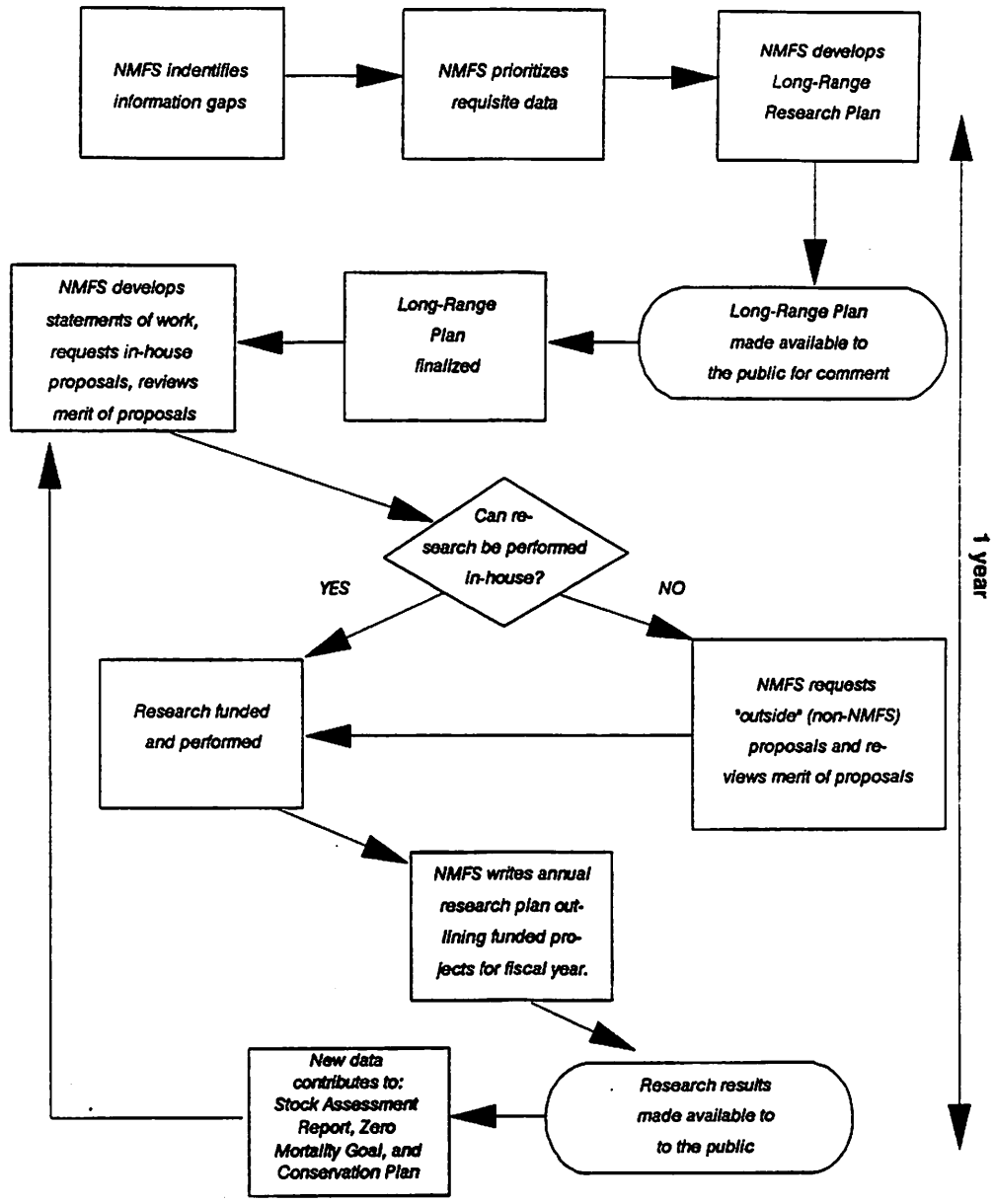
NMFS believes, and commenters to the DLEIS tended to agree, that a comprehensive long-range research program is one of the most essential elements of a sound conservation program for marine mammals. Any program governing the incidental take of marine mammals associated with commercial fishing must be based on an adequate stock monitoring program so that there are sufficient scientific data available to make the necessary

decisions regarding appropriate levels of removals from marine mammal stocks. Finally, information gained through research (e.g., migratory routes, breeding sites, etc.) might also identify additional steps that could be taken to further the effort to achieve the zero mortality rate goal.

In general, commenters were supportive of the long-range research program. However, a number of commenters were concerned that research priorities be accurately identified and that the public be provided with an opportunity to review and comment on NMFS research plans. In response to these comments, NMFS is proposing to develop a Long-Range Research Plan. The Research Plan will identify data required for sound management, thus mapping the direction of future research funded under the MMPA. This proposal does not identify research projects, but rather describes the process that would be used in developing the necessary research program (see Figure 6).

The first step in the process of developing a long-range stock assessment research program for marine mammal stocks would be to identify and rank in priority order critical information needs. The prioritized data needs would be used to develop a Long-Range Research Plan to direct annual research efforts and ensure the collection of the requisite marine mammal data. The Research Plan would contain both short- and long-term goals. The draft Research Plan would be made available to the public for comment.

FIGURE 6
STOCK ASSESSMENT RESEARCH PROGRAM *



* Although the program will be repeated annually, the process will not necessarily repeat for each stock.

The second step would be the development of statements of work for specific research projects, and the request for and review of detailed in-house (Center Laboratories and Regional Offices) proposals to obtain the information identified in the Long-Range Research Plan. A comprehensive review process would be established to determine the technical adequacy of proposed projects, i.e., how likely the project is to provide the needed information, and the adequacy of proposed methodology and reporting procedures (types of reports, submission dates, and data transfer). Based on the review of proposals, a determination would be made about which projects could be conducted by NMFS and which projects would require statements of work to be prepared for competitive procurement purposes. Proposals submitted from others would be reviewed using the established comprehensive review process. Acceptable projects would be funded expeditiously and an annual research plan made available to the public. The annual research plan would describe projects to be funded in the current year and how they relate to the Long-Range Research Plan.

After the research is completed, the results would be compiled into a report that would be made available to the public on an annual basis. These results would be used to revise population parameter estimates (i.e., abundance, maximum net productivity, stock determination) and may also be used to identify additional areas of research.

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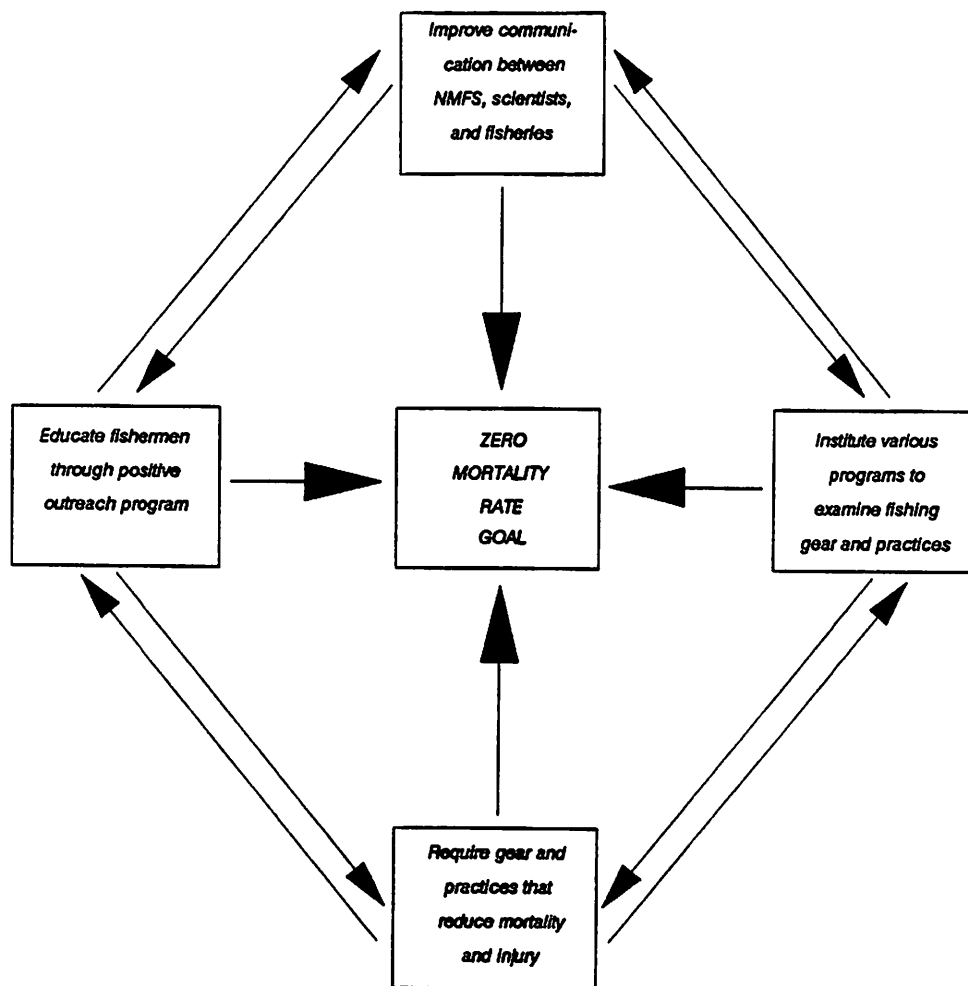
Although the research program would be developed based on the information needs associated with OSP determinations and calculating PBRs, which ultimately would be determined by NMFS managers and scientists, the results of the research would be made available to the public on an annual basis.

Zero Mortality Rate Goal

The "zero mortality rate goal" was included in the MMPA in 1972 to address the conflicts between conserving marine mammal stocks and allowing maximum use of commercial fishery resources. The zero mortality rate goal reflects the intent of Congress to allow the mortality or continued "take" of marine mammals incidental to commercial fishing when such interactions were considered unavoidable and would not disadvantage the involved marine mammal stocks. The 1988 amendments to the MMPA reaffirmed this goal, stating that "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" (MMPA Section 114(a)(1)).

An important part of NMFS' proposal was the retention of the zero mortality rate goal and the addition of requirements that more effective steps be taken to attain that goal (see Figure 7). A number of commenters to the DLEIS indicated that the zero mortality rate goal should be one of the major concerns addressed

FIGURE 7
ZERO MORTALITY RATE GOAL



by the NMFS proposal and that it was unclear as to how it was factored into the proposal. Accordingly, NMFS proposes to establish a pro-active program to evaluate the interactions between marine mammals and commercial fisheries and to determine ways to reduce the resulting serious injuries and mortalities. Priority would be given to fisheries having significant impacts on marine mammal stocks, and then on fisheries taking significant numbers of marine mammals. The status quo has not significantly advanced the zero mortality rate goal. In many cases, the lack of guidance on how the goal should be attained has led to inaction. In contrast, the proposed approach focuses on solving problems. NMFS would coordinate its efforts with the fishing industry so that realistic solutions can be developed. The program would include educational efforts, research to examine alternative gear and fishing practices, research to determine if high rates of interaction are correlated with certain areas, seasons, times of the day, and research on feasible ways to avoid interactions between marine mammals and commercial fishing operations.

Endangered Species Act (ESA)

In developing its proposal under the MMPA, NMFS addressed requirements under the ESA applicable to marine mammal stocks. Both the MMPA and ESA apply to marine mammal species that are listed under the ESA, and the two Acts contain different

provisions. Currently, the requirements of both the MMPA and the ESA must be satisfied to lawfully take any endangered or threatened marine mammal. Therefore, even if taking depleted marine mammals could be authorized under the MMPA, taking of endangered or threatened marine mammals incidental to commercial fishing would be prohibited in many cases under the current provisions of the ESA.

The ESA provides for the protection and recovery of endangered and threatened species. It establishes prohibitions on taking, requires the development and implementation of recovery programs, and requires Federal agencies to ensure that their actions are not likely to jeopardize the continued existence of listed species or destroy or adversely modify the critical habitat of such species. For species listed as endangered, the ESA prohibits most taking, but contains provisions in Sections 7 and 10 for authorizing incidental takes, provided that certain requirements are met. However, neither of these exceptions apply to taking incidental to commercial fishing outside of the territorial sea. In the DLEIS, NMFS proposed that Congress amend these provisions so that the taking of endangered marine mammals incidental to commercial fishing could be allowed, if appropriate.

NMFS believes that the proposed MMPA provisions allowing incidental takes would provide for the conservation of listed marine mammal stocks, and a separate permit or authorization

system under the ESA should not be necessary. The proposal under the MMPA is built upon the belief that, in certain cases, incidental taking of depleted marine mammals, including those listed as endangered and threatened, would not disadvantage the stocks or add significantly to recovery times and should be allowed at conservative levels.

Therefore, the proposal has been changed to exempt any takings incidental to commercial fishing authorized under the MMPA from the taking prohibitions of the ESA. All other requirements of the ESA, such as section 7 consultation and recovery planning provisions, would still be applicable. This approach may necessitate amending section 17 and other sections of the ESA. NMFS believes that this would be a simpler and less confusing system because fishermen would only be required to receive one authorization. At the same time, the proposal will provide for the recovery of endangered and threatened stocks.

Allocating Takes

1. Publishing PBRs

The first thing to be done after calculating PBRs for each stock that interacts with commercial fishing operations would be to estimate the total removal from each stock. The PBR, estimated total removal level, user groups and fisheries involved, and the estimate removal level for each user/fishery, would be published in the Federal Register each year. Stocks

would be divided into Class A, B and C, based on whether or not the total estimated removal is greater than the PBR or is expected to be greater than the calculated PBR within three to five years. As stated earlier, Class A stocks would be stocks designated as endangered, threatened or depleted, or those having total removals equal to or greater than the calculated PBR. The PBRs for Class A stocks would be allocated under the process described below.

Class B stocks would be stocks not designated as endangered, threatened or depleted, having total removals less than the calculated PBR, but likely to become Class A stocks in three to five years. Since the total removals are less than the PBR, and the stocks are not depleted, NMFS does not believe significant management efforts should be directed at these stocks; rather, efforts should be concentrated on stocks for which removals are or may be a problem, such as endangered, threatened and depleted stocks, and stocks where total take equals or exceeds the PBR (i.e., Class A stocks). Therefore, a simpler system to deal with Class B stocks has been added. User groups and fisheries that interact with these stocks would be identified; but no allocation of the PBR would be made. The fisheries would not generally be regulated or be monitored annually. Rather, a less frequent monitoring program would be developed to refine the removal estimates. Monitoring may be on the order of every two to five years for a fishery. However, if NMFS determines, based on

monitoring or other information, that the total removal level will exceed the PBR in any year, it would have the authority to issue emergency regulations. Although fisheries may exceed the estimated removal level for that fishery, in most cases, restrictions would not be considered until the total PBR was exceeded. The stock would be reclassified as Class A in the following year if the estimated total removal was equal to or greater than the PBR.

Class C stocks would be those stocks not designated as endangered, threatened or depleted and having total estimated annual removal levels less than the PBR and not likely to become class A stocks in the next three to five years. As with Class B stocks, user groups and fisheries that interact with these stocks would be identified, but no allocation of the PBR would be made. Fisheries interacting with these stocks would not need as extensive monitoring as either fisheries interacting with Class A or B stocks. These fisheries would be monitored every five to ten years, and regulation of the fishery would be unlikely. However, if NMFS determines, based on monitoring or other information, that the total removal level will exceed the PBR in any year, it would have the authority to issue emergency regulations.

2. Allocation of PBRs for Class A Stocks

For Class A stocks, the NMFS proposal involves allocating all or part of the PBR among user groups that incidentally (i.e.,

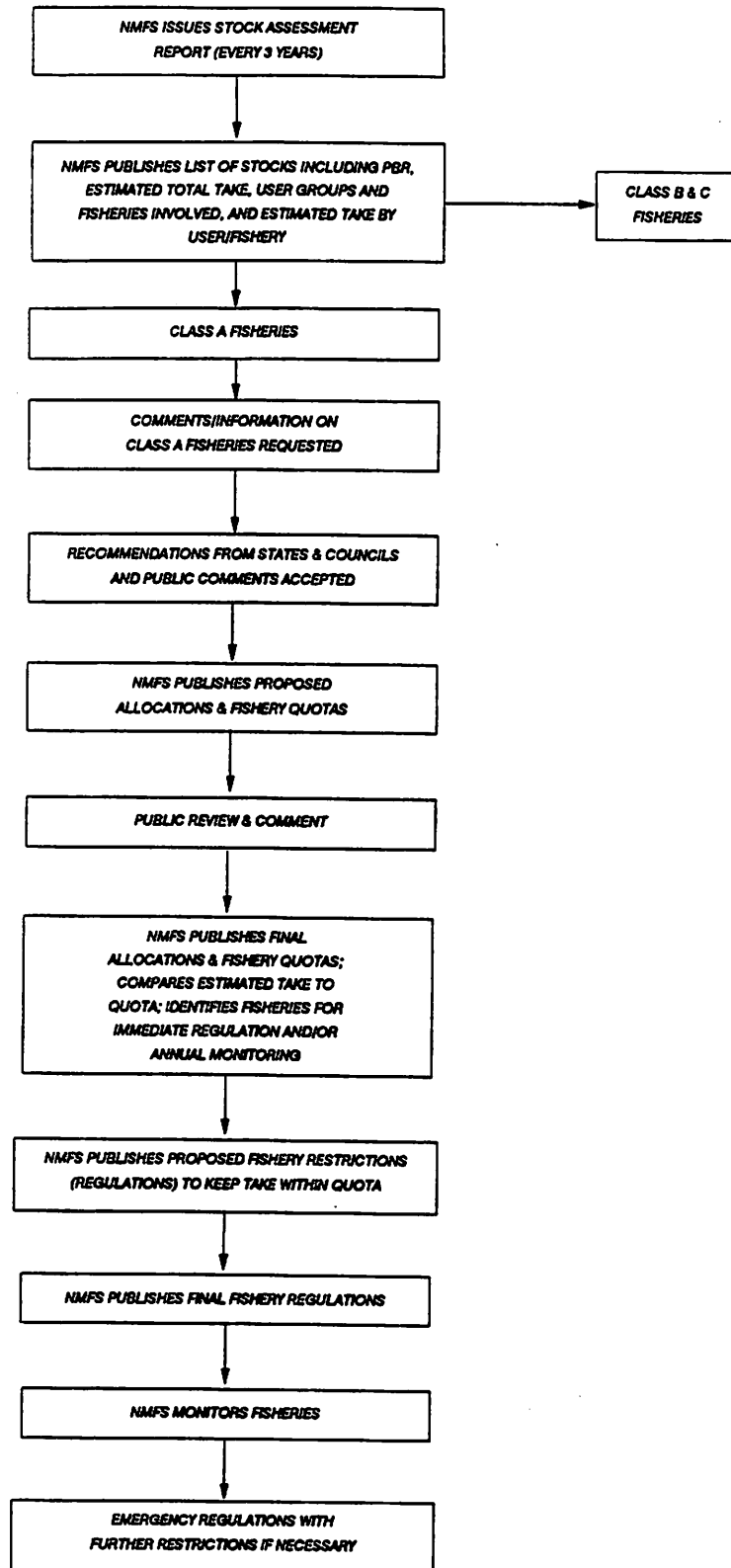
commercial fishing, vessel strikes) or directly (subsistence, public display and scientific research) remove animals from the wild. Placing all removals of marine mammals under a single proposal should ensure that the authorized levels of removals will not disadvantage the involved stock(s) and assure the various users that their operations will not be suddenly and unnecessarily disrupted. No removals from Class A stocks would be authorized without an allocation of part of the PBR for that marine mammal stock. When a particular user group reaches the number of animals allocated to it for a marine mammal stock, additional removals from that stock would be prohibited, and the operations of the user group may need to be modified or stopped.

Through the allocation process, NMFS would assess whether or not allocating the entire PBR is appropriate. This would include the need to adjust allocations to user groups for depleted or endangered stocks to comply with any recommendation for special restrictions on removals if warranted, to consider ways to move toward the zero mortality rate goal, and to factor explicitly other considerations needed to ensure that the proposal is implemented soundly and equitably. This adjustment process may result in allocating only part of the PBR to user groups (i.e., the sum of allocations to all user groups would be less than the PBR). NMFS would be required to make policy judgements that protect marine mammal stocks, but also balance other important technical, legal and policy considerations. During the

allocation process, these judgements will be clearly explained and subject to public and judicial review (Figure 8).

In the DLEIS, NMFS proposed two separate processes for allocating PBRs among all user groups and then allocating the fisheries portion among fisheries. The two processes were sequential and both had to be completed prior to allowing takes. These processes were designed to provide for input from experts and from all interested parties. The allocation process has been streamlined by combining the two processes and eliminating the allocation board. The combined procedure will reduce potential redundancy and expedite establishing quotas, while still providing for significant public and user group involvement in the process.

In the DLEIS, NMFS had proposed to subtract mortalities described as "uncontrollable removals" from the PBR calculation. In response to the comments, and upon re-evaluation of the methods available to "control the uncontrollable," NMFS has determined only subsistence removals should be subtracted from the PBR. NMFS proposes to take an array of measures to address other sources of removals. These include using existing international agreements, such as the Driftnet Agreements, to the fullest extent possible to control and monitor foreign fishery interactions. Where no agreements exist, NMFS will seek action from the Secretary of State to initiate negotiations to develop

FIGURE 8**ALLOCATION PROCESS**

multi- or bilateral agreements with other nations for the protection and conservation of marine mammals.

The allocation process begins by publishing the list of Class A, B, and C stocks, fisheries and other user groups that interact with these stocks, and estimated removal levels (as described in the preceding section). Allocations would be made only for Class A stocks. Comments and information would be requested for use in the allocation process, including recommendations from state fishery agencies and Fishery Management Councils. State fishery agencies and Fishery Management Councils are aware of local conditions and should help to ensure that allocations are equitable. For example, these bodies would help ensure that marine mammal quotas are consistent with fisheries quotas (e.g., fisheries occurring early in the year do not use up an allocation so that fisheries occurring late in the year are more likely to be restricted when the fishing allocation is reached). State fisheries agencies and the Councils would be requested to provide recommendations for each fishery, along with the basis for their recommendations.

In order to ensure that all relevant factors are considered in the allocation process, NMFS would conduct environmental and socio-economic analyses prior to developing proposed allocations. NMFS would also review the results of the Stock Assessment Report (and conservation/recovery plan for depleted stocks) and evaluate whether any biological considerations (such as the need to

restrict removals by season, area, age, sex or reproductive class, or the need for other protective measures) should be factored into establishing allocations. The Stock Assessment Report should provide a sound scientific basis for this determination. In some cases, this adjustment process may result in a zero allocation to one or more user groups.

NMFS would publish the proposed allocations for all user groups and all commercial fisheries along with the reasoning for the allocations, and comments from all interested parties would be solicited. This is the most appropriate time for public comment since all interested parties would be able to review the resulting allocations and the reasoning supporting these decisions, and reflect on the impacts individual allocation decisions might have on local stocks and user groups, including fisheries.

NMFS would respond to public comments and make any appropriate changes to the allocations. Affected parties would then have the right to seek judicial review of NMFS' final determinations. This approach would provide for adequate review and involvement by interested and affected parties.

Intentional Non-Lethal Taking

Under the Interim Exemption, commercial fishermen could use non-lethal measures to deter certain marine mammals from damaging their gear or catch. These techniques include the use of small

explosive devices, mechanical and electronic noise makers, shooting in the vicinity without intent to injure, chasing or deterring marine mammals with boats, and behavior modification. In the original proposal, NMFS determined that, although not conclusive, studies suggest that repeated exposure to harassment devices could have adverse effects on marine mammal social behavior, physiology and reproduction. Accordingly, NMFS proposed allowing use of non-lethal measures only to ensure personal safety and to protect gear or catch if NMFS determines by regulation that the taking will not have a significant adverse effect on the marine mammal stocks.

A number of commenters supported NMFS' position on addressing intentional non-lethal taking, which has not changed from the approach taken in the DLEIS. Regulations implementing this proposal would authorize non-lethal takings only if NMFS determines that the taking will not have a significant adverse effect on the involved marine mammal stocks. The regulations would specify the types of devices and techniques that could be used, the fisheries in which these devices and techniques could be used, and any restrictions on their use. This list of techniques and fisheries could be modified based on new information. Fishermen operating on vessels registered in the identified fisheries would be allowed to use the described methods of intentional non-lethal methods of take to deter marine mammals from damaging their catch or gear. This authorization

* * * DRAFT INTERIM PROPOSAL * * *

would be available only for vessels that are required to register with NMFS (see Categories of Fisheries). Authorizing the taking by regulation would allow adequate public participation in the process.

Intentional Lethal Taking

If non-lethal harassment measures are not successful, fishermen may resort to methods that injure or kill marine mammals, particularly after suffering substantial damage or loss to gear or catch. Under the general permits, fishermen were authorized to take measures that could result in serious injury or mortality of marine mammals. The Interim Exemption continued this authorization, with prohibitions on lethal taking of some species. Since damage to catch or gear caused by marine mammals is severe at times, fishermen have recommended that the proposal include provisions for authorizing intentional lethal takes.

The initial proposal prohibited commercial fishermen from intentionally killing or injuring marine mammals, except to ensure personal safety. Upon request, exceptions for a fishery could be made if the lethal taking is necessary to mitigate a demonstrable significant negative impact on the fishery. A number of commenters supported the original proposal to allow intentional lethal taking under certain circumstances. Intentional lethal takes would be authorized if (1) there is a demonstrated need, (2) non-lethal means have been tried and were

not effective, (3) the taking could be conducted within the allocation for Class A stocks, and within the PBR for Class B and C stocks, and (4) the taking was monitored. Under this proposal, intentional lethal taking would not be authorized for cetaceans or depleted pinnipeds.

Lethal takings would be limited under the proposal and thus would not adversely affect marine mammal stocks. Rather, the proposal would allow flexibility for intentional lethal taking in limited situations where personal safety is involved and where there are significant adverse economic effects on the fishery. NMFS also would work with the involved fishermen to reduce the level of interactions with marine mammals and reduce the need for such removals. Allowing for lethal take under such circumstances would negate the economic consequences that would occur in some fisheries where interactions are severe.

MMPA Authorization

In proposing that it should be mandatory for fishermen to obtain authorization under the MMPA to fish and to take marine mammals incidentally, NMFS examined the existing requirements on commercial fishermen. Prior to the 1988 Amendments, the MMPA prohibited unauthorized incidental takes of marine mammals but did not require authorization to fish. Individual fishermen or vessels did not need authorization under the MMPA to participate in commercial fisheries. Instead, fishermen could apply for

general permits or small take exemptions to authorize the incidental take. Violation of the MMPA occurred only if an unauthorized take of a marine mammal occurred.

Under the Interim Exemption, to engage lawfully in those fisheries with frequent (Category I) or occasional (Category II) takes of marine mammals, vessel owners must register and obtain an Exemption Certificate for each vessel. Fishermen or vessel owners are in violation of the MMPA when they participate in such fisheries without registering with NMFS to obtain an exemption, whether or not any takes occur.

A number of commenters agreed with NMFS that authorization both to fish and to take marine mammals should be required under the MMPA, and that there should be one registration for both. The approach taken in the original proposal was intended to avoid problems encountered under both these systems and is adopted in this revised proposal. Vessel owners operating in certain fisheries would be required to register annually with NMFS to obtain an MMPA authorization. For other vessel owners, no registration would be required.

The mandatory registration system would assist NMFS in informing and educating fishermen, allocating and monitoring takes, and enforcing quotas. The registration system would be similar to that being used under the Interim Exemption, with modification of categories of fisheries and requirements associated with the categories. Mandatory registration would

provide a mechanism through which fishermen's overall awareness of the problems associated with the incidental taking of marine mammals and the purposes and goals of the MMPA could be enhanced. The registration scheme would also provide a practical basis for gathering information on the nature and level of fishing effort and the number and kinds of vessels participating in fisheries. Such information could be used to assess the likely impacts of a fishery on marine mammal stocks or to monitor the incidental take in the fishery.

Categories of Fisheries

The original proposal divided fisheries into two categories: (1) those likely to interact with marine mammals or whose direct interactions (lethal or non-lethal) may adversely affect a marine mammal stock; and (2) those not likely to interact with marine mammals and whose direct interactions do not adversely affect marine mammal stocks.

Although supporting the general approach of dividing fisheries, numerous comments stated that a more precise definition of the term "likely," was required. In attempting to develop a more precise definition, NMFS concluded that using likelihood of future interactions as a basis for registration and other management measures was not adequate. In addition, as indicated by many comments, the proposal should provide a basis to establish priorities for dedicating resources on interactions

between commercial fisheries and marine mammals. NMFS believes that a more useful approach is to characterize the magnitude and effects of these interactions, and use this information to allocate resources to fisheries having significant impacts on marine mammal populations. This approach ensures that resources are targeted on problem fisheries rather than dissipated among all fisheries. A number of steps are involved in the categorization of fisheries which in turn affect the extent of monitoring and/or imposed regulations. This system of categorizing fisheries provides a useful basis for developing priorities for allocating available resources.

Historical data would be used to determine which commercial fisheries interact and do not interact with marine mammals. All vessels operating in interacting fisheries would be required to register and obtain MMPA authorization prior to engaging in fishing operations. Vessels operating in non-interacting fisheries would not be required to register. An interaction would be defined to mean "contact with gear or catch, or intentional harassment, injury or mortality." The only automatic consequence of registration is the payment of a nominal fee. Other potential requirements, such as the extent of monitoring and/or management would depend on the stocks with which the fishery interacts.

Based on the best stock assessment data, the status of the stock would be determined and PBRs would be calculated for each

marine mammal stock that interacts with commercial fishing operations. Each interacting marine mammal stock then would be placed into one of three categories based on whether it is designated endangered, threatened or depleted and on the level of removals with respect to the PBR. Class A stocks are designated as endangered, threatened or depleted, or have total annual removals (T) equal to or greater than the calculated PBR. Total annual removal (T) is defined as the sum of removals from all human sources, including subsistence (T_s), fishing (T_f), public display (T_p), etc.

Class B stocks are not designated as endangered, threatened or depleted and have total annual removals less than the calculated PBR, but are likely to become Class A stocks within three to five years. To help determine whether a stock belongs in Class B, the following criteria will be used: (1) total annual removals are increasing and the present rate of increase is likely to exceed the calculated PBR in three to five years, and (2) stocks are declining while removal levels remain stable or exhibit an increasing trend.

Class C stocks are not designated as endangered, threatened or depleted, have total annual removals less than the calculated PBR and are not likely to become Class A stocks in the next five years.

Fisheries would be categorized on the basis of the marine mammals with which they interact. Any fishery interacting with a

Class A stock would be designated as a Class A fishery. A fishery not interacting with a Class A stock but interacting with a Class B stock would be designated a Class B fishery. All other interacting fisheries would be designated Class C fisheries (see Table 1).

1. Class A Fisheries

Under this proposal, vessels operating in Class A fisheries are required to register with NMFS. In addition, these fisheries may be subject to comprehensive monitoring on an annual basis and to restrictions to reduce the level of removals. Prior to determining the need for monitoring and/or restrictions, the PBR for Class A stocks would be allocated among the different user groups (public display (PBR_p), fishing (PBR_f), research (PBR_r), subsistence (PBR_s), etc.). The total PBR_f would be allocated among individual fisheries (A_i). Allocations would be based on the following criteria (1) socio-economic needs, (2) biological considerations outlined in the Stock Assessment Reports, (3) historical take rates, (4) past performances to reduce take, and (5) the ability to reduce takes.

The part of the PBR allocated to fishing, (PBR_f), represents the maximum number of removals that would be allowed from all fisheries combined. The maximum number that an individual fishery could take would be the quota for that fishery. This number would provide a "benchmark" for determining the need for annual monitoring and/or restrictions.

If the estimated number of removals from all fisheries, (T_F), in a given year is less than the fishing allocation, (PBR_F), no immediate restrictions would be needed nor would annual monitoring be required. NMFS would work with fisheries with large numbers of removals to develop ways to reduce the number of removals. If this is not successful, then restrictions may be imposed on the fishery. Monitoring for these fisheries will be conducted intermittently, every two to five years or at the discretion of NMFS.

However, if the total removal from all fisheries, (T_F), is greater than the fishing allocation, (PBR_F), annual monitoring of some or all of the involved fisheries would be required and immediate restrictions may be applied to some or all fisheries. NMFS believes that monitoring efforts and restrictions should be focussed on fisheries taking more than 10 percent of the total allocation to fisheries, (PBR_F). The need for annual monitoring or restrictions would be determined on a fishery-by-fishery basis. NMFS does not anticipate placing restrictions on fisheries taking less than 10 percent of the total allocation to fisheries. Monitoring of these fisheries would occur in a two to five year cycle or at the discretion of NMFS.

Fisheries with large incidental removals may be restricted to reduce the impact to the involved marine mammal stocks and may require annual monitoring. Management measures could include reduced fishing season, gear, area or time of day restrictions,

or other means of reducing removals. The regulations establishing the specific management measures would be developed with input from fishermen and environmental groups through notice-and-comment rulemaking. In addition, if the expected removals are greater than the allocation, (A_T), these fisheries would be monitored on an annual basis. The monitoring program would be designed to estimate removals in a timely manner so that actions could be taken to prevent any quota from being exceeded during the year. Management measures would be triggered at a certain removal level to prevent the allocation from being exceeded. Fishermen operating in that fishery would be informed in the most expeditious manner practicable of the pending restriction(s). Notification also would be made in the Federal Register, but the restrictions would not take effect for at least five working days from the date of publication. Management measures would vary, depending upon the circumstances, which could range from a requirement of 100 percent observer coverage to a prohibition on landings or additional fishing.

2. Class B Fisheries

Vessels operating in Class B fisheries are also required to register with NMFS. These fisheries would not require annual monitoring. NMFS would work with Class B fisheries that remove large numbers of marine mammals to develop ways to reduce the number of removals. Class B fisheries would be monitored every two to five years or at the discretion of NMFS.

3. Class C Fisheries

Vessels operating in Class C fisheries would be required to register with NMFS and may require monitoring every five to ten years, depending on the level of incidental removals. NMFS does not anticipate the need for management measures in these fisheries, except in unusual circumstances.

4. List of Fisheries

Based upon the best available information, a proposed List of Fisheries will be published annually. This list will identify fisheries that interact with marine mammals and those that do not. Interacting fisheries will be divided into Class A, Class B, and Class C fisheries. This list will explain the basis for categorizing the fisheries. When the available information is equivocal, the fishery will be placed in the more restrictive of the two Classes to increase the likelihood that the fishery will be monitored. The proposed List of Fisheries will be made available for public review and comment. After consideration of public comments, a final List of Fisheries will be published in the Federal Register.

NMFS believes that the proposed system for categorizing fisheries will provide a basis for the efficient allocation of resources. This approach avoids the need to register vessels operating in fisheries not interacting with marine mammals. In addition, this approach focuses resources on fisheries which are most likely to be having adverse impacts on marine mammals.

* * * DRAFT INTERIM PROPOSAL * * *

Enforcing Quotas

In the DLEIS, NMFS proposed an array of actions that would be taken to enforce quotas when it appeared that they were going to be reached or exceeded. This revised proposal has been changed to include provisions to regulate a fishery at the beginning of the year to reduce removals in cases where the removal level is large and is estimated to be greater than the allocation for the fishery.

For Class A fisheries, NMFS would compare the estimated total removal for all fisheries (T_F) with the total estimated fishery allocation, PBR_F . If the total removal is less than PBR_F , no immediate regulation would be needed and annual monitoring would not be required.

If the total removal from fishing (T_F) is greater than PBR_F for an individual stock, NMFS will evaluate the situation to determine the need for regulation. If the take by a fishery ($T_{F,I}$) is less than 10 percent of the total allocation to fisheries, PBR_F , and the estimated individual fishery take is less than or equal to the individual fishery allocation (A_I) (i. e., quota), then it is unlikely that immediate regulation or annual monitoring would be required (the subscript I identifies an individual fishery and the sum of all fishery specific allocations (A_I) equals the total fisheries allocation (PBR_F)).

Fisheries expected to exceed their quota and having a high removal level are the most likely to be regulated and require

annual monitoring. Regulations could implement immediate restrictions or identify conditions that would trigger implementation of restrictions, such as time, area or gear restrictions. Such conditions could include reaching a certain level of removals. Immediate restrictions could include measures such as reduced fishing season, gear, area or time of day restrictions, or other means of reducing removals. The goal of immediate regulations would be to implement measures before fishing commences to keep removals by the fishery within allocated levels, and the goal of identifying conditions that would trigger restrictions would be to allow fishing operations to continue uninterrupted as long as quotas are not likely to be exceeded. In either case the restrictions would remain in effect only if they were needed to prevent quotas from being exceeded.

Regulations establishing the restrictions would be developed with input from fishermen and environmental groups and would involve notice-and-comment rulemaking. Restrictions would vary, depending upon the situation, and could range from a requirement of 100 percent observer coverage to a prohibition on landings or additional fishing.

In addition, for these fisheries, the monitoring program would be designed to estimate removals in a timely manner so that appropriate action can be taken to prevent a quota from being exceeded during the year. If immediate restrictions are placed on a fishery, and it is unlikely that the quota will be exceeded,

then annual monitoring may not be required. Fishermen holding an MMPA registration for that fishery would be informed in the most expeditious manner practicable of the pending conservation measures/restriction(s). Notification also would be made in the Federal Register, and the restrictions would not take effect for at least five working days from the date of publication.

The method(s) used to limit and control incidental takes would be as flexible as possible to manage the allocation with as little impact on commercial fishing operations as practicable. This proposed system directs actions at the problems, and not at fisheries with a remote likelihood or no known occurrence of lethal takes.

NMFS would work with the involved states and Regional Fishery Management Councils to implement any actions to keep from exceeding allocations. For example, restrictions in state-controlled fisheries could be implemented through cooperative agreements between the state and NMFS under section 112 of the MMPA.

Monitoring Removals

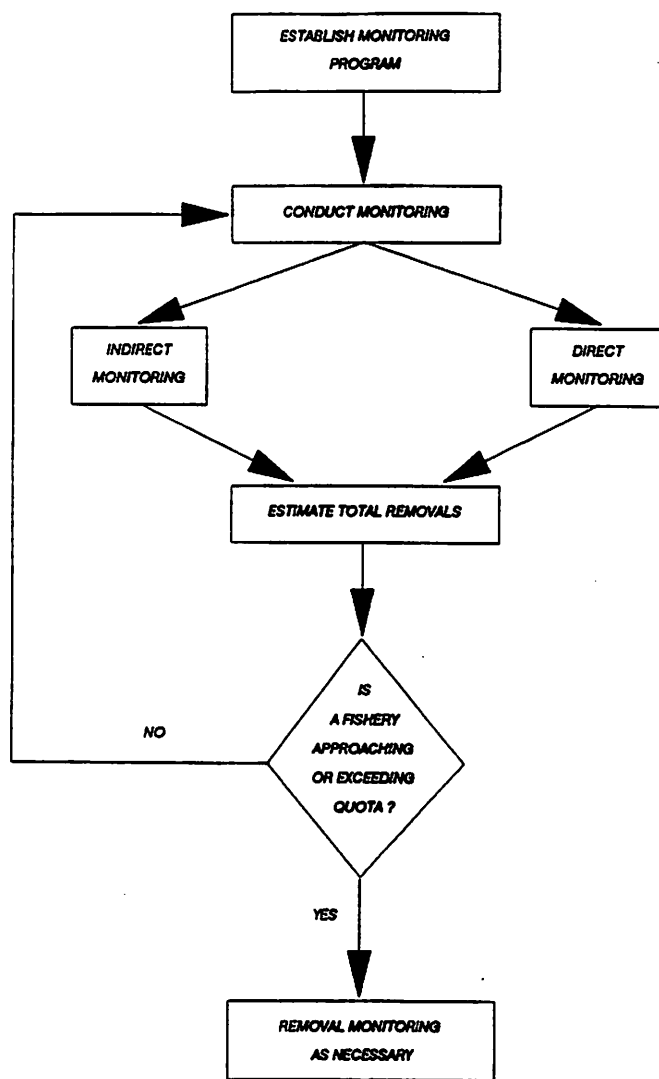
This section discusses the type and level of removal monitoring proposed by NMFS. Under the original proposal, there was broad-based authority to monitor the removals of marine mammals during commercial fishing, including on-vessel observers, remote-platform observers, and logbook reporting by fishermen,

and available indirect methods that are accurate/precise and cost-effective (see Figure 9). Most commenters agreed with this approach, but many suggested focussing monitoring resources on problem areas. Under this proposal, NMFS would retain the broad authority to monitor fisheries, but would focus resources on Class A fisheries. (The new system for categorizing fisheries would provide a basis for ranking monitoring needs.)

To accurately assess the effects of removals on marine mammal stocks, a comprehensive long-term monitoring program is required. Without such a program, it will not be possible to estimate removals from marine mammal stocks with acceptable precision. Authorizing removals without the appropriate monitoring can jeopardize the long term health and persistence of the affected marine mammal stocks.

For the monitoring program to be effective, it must be flexible and responsive to (1) current removal levels, (2) stock status (e.g., endangered, threatened or depleted), (3) the types of data required, (4) fishery observation constraints (direct or indirect), (5) the level of precision required, and (6) the timing of required removal estimates (critical when the possibility of exceeding quotas exists). In addition, the design of sampling programs to collect requisite monitoring data must be statistically sound, and, when possible, should use existing data to enhance future sampling efforts. Sampling designs must be adaptive and capable of assessing the success of restrictions in

FIGURE 9
REMOVAL MONITORING



keeping removals within quotas. NMFS intends to use a combination of direct and indirect monitoring designs to estimate removals.

One of the primary goals of the MMPA was to reduce the incidental mortality of marine mammals to insignificant levels approaching a rate of zero. During the initial phase of a monitoring program, observer effort generally is allocated randomly throughout the fishery. All vessels within the fishery have a similar probability of being selected for observer placement throughout the fishing season or calendar year. However, in subsequent years, observer effort will focus on those times and locations where commercial fisheries operations significantly overlap with the known distribution of marine mammal species taken incidental to the fishery.

A monitoring program should provide an adequate estimate of the number of removals, evaluate the extent of takes relative to the fishing effort, and also be able to evaluate the observed incidental take relative to a fishing technique or gear type (i.e., does the take occur near the middle or end of a gillnet, near the float line, etc.,). For example, over the past two years, NMFS has instituted performance standards for U.S. skippers in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific. In combination with restrictions on certain fishing practices (i.e., elimination of "sundown" sets), the level of incidental mortality has been significantly reduced.

* * * DRAFT INTERIM PROPOSAL * * *

Instituting similar programs in other fisheries may also reduce mortality levels in these fisheries.

Fisheries requiring observers will be ranked in priority order based on the perceived or known impact of current removals on stocks. This will allow for the more efficient allocation of available monitoring resources to "problem" fisheries. This is not to say, however, that fisheries exhibiting low removal levels will not be monitored. Rather, monitoring in these fisheries would occur at a lower frequency and require fewer resources. The periodic allocation of minimal sampling effort to "non-problem" fisheries provides a mechanism to detect changes in incidental removals by those fisheries, while minimizing interference with the fishery.

1. Observers on Vessels

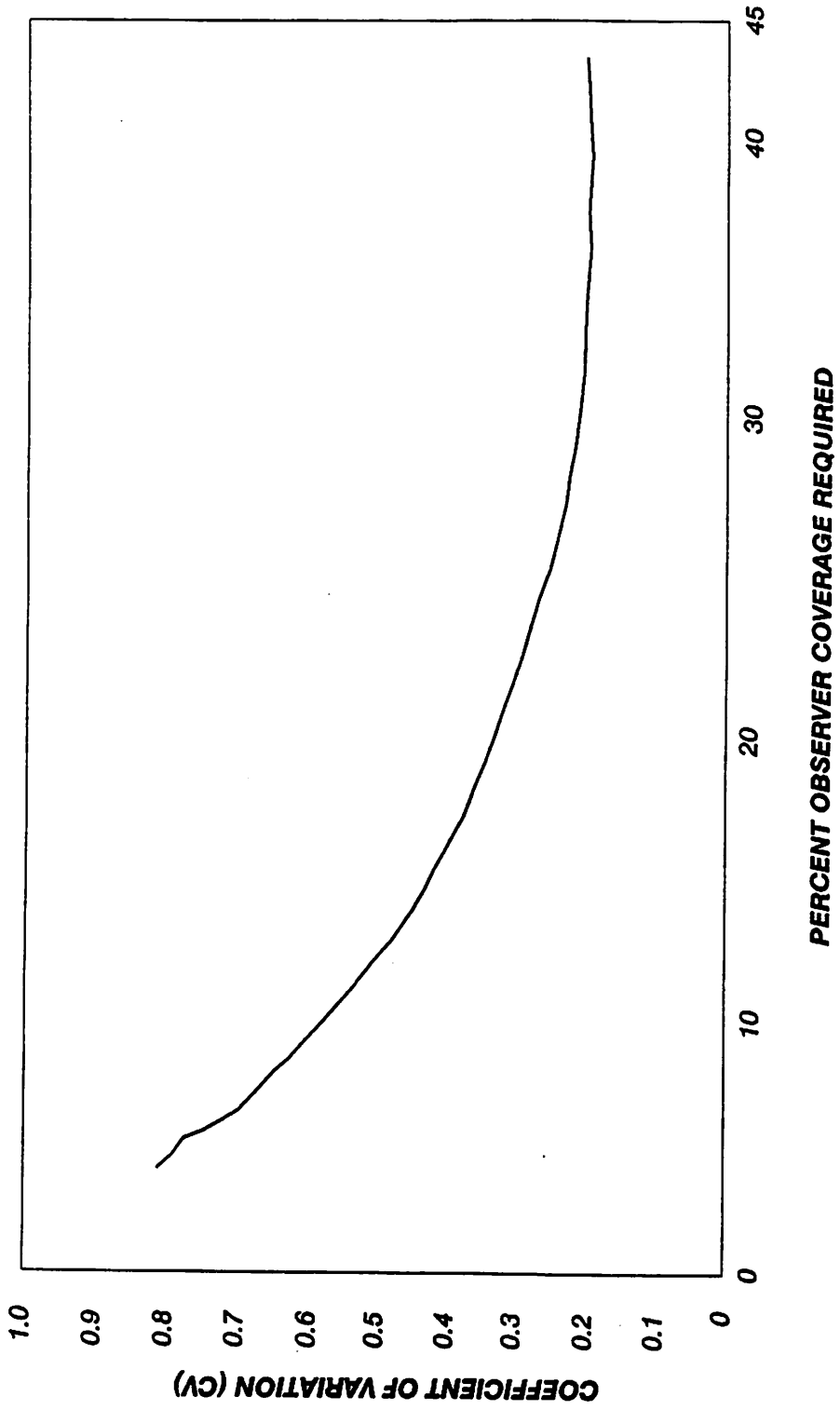
NMFS proposes that Congress grant it the authority to place an observer on any vessel, whether or not there is a registration requirement. Observers are an effective way of monitoring marine mammal removals, as trained observers are able to provide reliable data and samples on the environmental, oceanographic, and biological factors related to the removals. Comments received on the original proposal indicate a high level of support for the proposal to place observers on vessels to monitor removals, especially if the placement is targeted on fisheries in which removal levels are thought to have significant adverse effects on marine mammal stocks. The level of observer coverage

within a fishery will depend on the characteristics of the fishery (e.g., removal rates relative to the allocated PBR), the required precision of removal estimates and timing of required removal estimates. In some instances, NMFS may require 100 percent observer coverage, especially when a quota is being approached. NMFS believes that adequate estimates of total marine mammal incidental take within a fishery should have a Coefficient of Variation (CV) of 20 percent or less. When 100 percent coverage is not required, the actual level of observer coverage will be based on available information on the fishery.

An example of how available data will be used to optimize future sampling is depicted in Figure 10. Based on an initial observer coverage rate of 4 percent and CV of 57 percent for marine mammal removal rate, the graph indicates the required sample size (percent observer coverage) for varying CV levels. To decrease the CV to 20 percent would require that observer coverage be increased to approximately 30 percent of the fishing effort. As can be seen in Figure 10, an increase in observer coverage above the 30 percent level does not improve precision enough to justify the additional expense. As more data become available, the sampling design will be optimized both spatially and temporally.

NMFS believes that monitoring marine mammal removals should be done in conjunction with other monitoring efforts where possible. State and Federal fishery monitoring operations or

FIGURE 10
RELATIONSHIP BETWEEN COEFFICIENT OF VARIATION
AND PERCENT OBSERVER COVERAGE



observer programs, such as the observer programs under the Magnuson Fisheries Conservation and Management Act, should gather information on the frequency of marine mammal occurrence and incidental take. Several comments received on the initial proposal indicate support for "dovetailing " with other observer programs having similar mandates and information needs, wherever possible.

2. Remote-Platform Observers

NMFS also would have the authority to use remote-platform observers to monitor fisheries. The term "remote-platform" is defined broadly to include any structure, stationary or mobile, that is separate from the fishing vessels. A platform could thus be an aerial platform, a cliff along the shore or a dedicated observer vessel. Use of trained observers operating from platforms may be practical for monitoring marine mammal incidental catch in some fisheries, especially when observers cannot adequately sample portions of a fishery (i.e., an entire class of vessels).

These alternate observation techniques could be very effective when (1) the size of the monitored vessel precludes observers from boarding (i.e., safety reasons), (2) fishing vessels are aggregated so that several may be monitored at the same time, or (3) fishing techniques include long soak times during which no data can be collected. For example, the Columbia River salmon gillnet fishery, with several hundred small vessels,

would require large numbers of observers for adequate coverage if each observer monitored only one vessel. Using dedicated vessels to ferry observers among fishing vessels has reduced the number of observers needed to provide adequate vessel coverage. The use of remote-platforms could, however, limit the types of data (i.e., biological samples) that are collected, because observers do not board the fishing vessels. When developing remote-platform sample designs, every attempt will be made to maximize the types and quality of data collected.

3. Fishermen Logbook Reports

Under the proposal, NMFS would have the authority to require logbook or other reporting of fishermen. NMFS does not anticipate a widespread requirement for logbooks; rather, it would use its authority to obtain information on certain fisheries for specific reasons. Fishermen's reports may be used with observer data to determine the extent of marine mammal incidental take within any fishery and to determine total annual fishing effort. The scientific usefulness of logbook data is currently being evaluated by NMFS. Comments received on the initial proposal suggest a high level of support for requiring some form of logbook reporting, especially if the data can be compared to, integrated with, and reviewed for accuracy against the data collected by observers.

4. Indirect Indices

Other forms of indirect monitoring could include, but not be limited to, stranding reports. For example, a whale found stranded and net-entangled may, in certain circumstances where fisheries can be identified, be considered a fishery-related incidental mortality. Such information may be useful in determining whether or not observers should be placed in certain fisheries. Any integration of stranding data with incidental take data would have to be handled on a case-by-case basis.

User Fees

For any proposal governing interactions between marine mammals and commercial fishing operations to be successful, adequate funding must be available on a consistent basis to implement the proposal, including programs to monitor marine mammal stocks and incidental takes. Two sources of funding are proposed to support the programs presented under the proposed management proposal, standard registration and fishery-specific user fees. Proceeds of a standard registration fee would cover costs of the registration program and fishery-specific user fees could be assessed for enhanced monitoring requirements in particular fisheries.

NMFS continues to believe that funding from a registration fee should provide a stable basis for funding the administrative components of the proposal. However, when PBR quotas are likely

to be exceeded, NMFS believes that increased mandatory coverage would be necessary (possibly 100 percent coverage) to ensure that quotas are not exceeded and that such costs should be borne by the industry. This proposal presents an approach to calculating the costs of funding observer programs in these circumstances and presenting commercial fishermen with the option to pay these costs as the price of continued fishing.

Several commenters were concerned that NMFS had not adequately defined in the original proposal what situations might require industry funded observers. As a consequence, these commenters feared commercial fishermen might be liable for open-ended supplemental funding. As explained above, commercial fishermen will not be required to pay for base observer programs to monitor removals of marine mammals. However, there will be occasions when the number of removals is approaching the quota and some action is required to prevent exceeding the quota, including closing or restricting the fishery. If methods that may minimize or prevent additional removals are identified, then fishing may be allowed to continue if there is adequate observer coverage. In some cases, the amount of observer coverage may increase substantially over the base level and may reach 100 percent. Such observer coverage will present an extraordinary cost. The additional observer costs necessitated in these situations should be borne by fishermen who wish to continue operating in the fishery. NMFS would calculate the costs of

providing increased observer coverage and provide fishermen with the option of paying these costs or discontinuing fishing.

Based on present costs of the MMPA observer program, NMFS plans to determine the estimated cost per vessel for the required level of observer coverage. If additional observer coverage becomes necessary, NMFS will provide observers and authorize the continuation of the fishery on a vessel-by-vessel basis. Observer fees would be received by NMFS prior to any further commercial fishing activity. The estimated vessel cost will give commercial fishermen a basis for making decisions whether to pay the costs of continued fishing. Practical issues might influence actual costs; for example, the proximity of observer vessels or platforms might reduce actual costs, whereas the need to have observers on standby while decisions are being made might require upward adjustment of the figures.

Implementation Date

The proposal would be implemented in a step-wise, but expeditious, manner over a two-year period after legislation is signed by the President. NMFS believes that two years are necessary to implement fully its proposal, including the preparation of Stock Assessment Reports, the establishment of Scientific Review Groups, the establishment of long-term monitoring programs, and to provide adequate opportunity for public participation. In the interim, this proposal would be

phased in. It would not be appropriate to continue the Interim Exemption of the 1988 Amendments, because there are few limits on marine mammal removals, and even these are not always adequate. For example, under the Interim Exemption a total of 1350 Steller Sea Lions may be killed; the stock cannot withstand continued removals at that level, and there is no demonstrated need for it. Procedural regulations would be in place within the two-year period following the end of the Interim Exemption period.

This procedural, "frame-work" rule will establish, among other things, the Scientific Review Groups; guidelines and instructions for establishing taking allocations, categorization of fisheries, implementing a fee schedule, etc. It should be noted that this rule will not establish fishery-specific regulations (e.g., establishing marine mammal quota(s), monitoring incidental take levels, and restrictions on fisheries to avoid exceeding quotas).

Phased Strategy

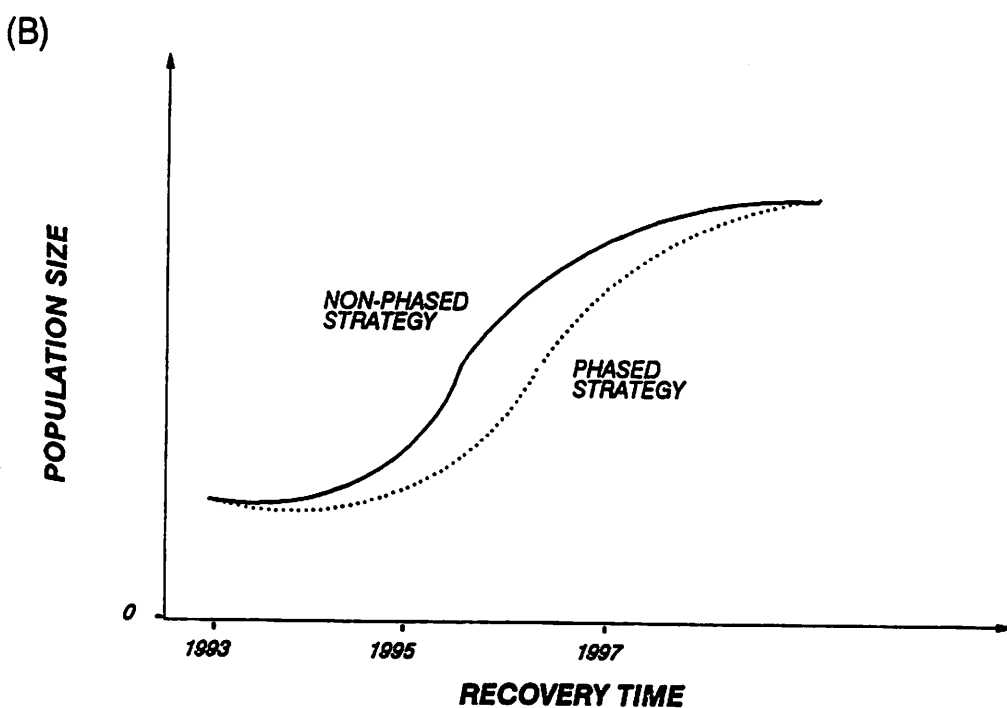
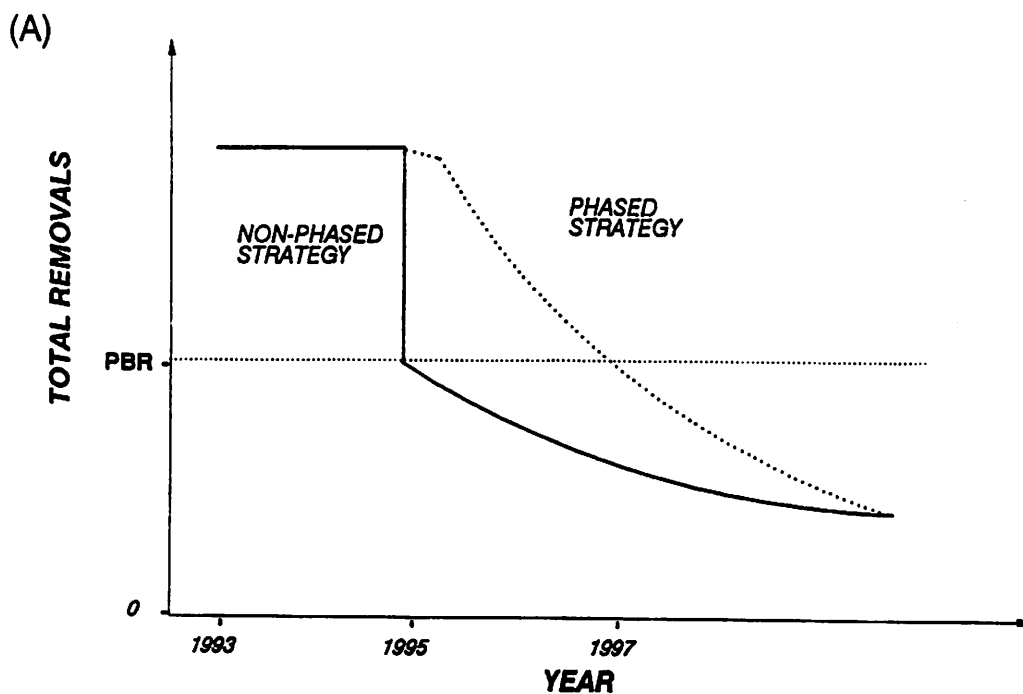
NMFS believes that total annual removals of some marine mammal stocks may exceed the PBR in the initial years after the implementation date of the proposal. Fisheries interacting with these stocks either would be closed or severely restricted starting in 1995 if total removals were not reduced to levels less than or equal to the PBR (NMFS terms this strategy as "non-phased"). In some instances, closure may be the only recourse,

while in other cases a "phased" strategy, which gradually reduces total removals to levels below PBR, may be more appropriate.

Under a phased strategy, total removals could be greater than the PBR during initial years of the proposal, before being reduced to levels less than the PBR. However, significant reductions in takes would occur each year. Adopting a phased strategy results in reducing removals, but over a longer time frame when compared to the non-phased reduction strategy (Figure 11A). A requirement of the phased strategy would be that total removals must decrease at a rate such that they would be less than or equal to the PBR about two years after the implementation date of the proposal. By adjusting annual reductions in removal rates, population recovery times can be calculated. An example of population trajectories for phased and non-phased strategies is shown in Figure 11B. While population size asymptotes for each strategy are similar, their realizations occur over different time scales. By varying annual reductions of removals, the effects to population recovery times can be determined, allowing for the optimization of the strategy. For those fisheries in which removals are significantly greater than the calculated PBR levels, the phased strategy could be employed. Removal reduction schedules will be developed by NMFS and the appropriate fisheries with the goal of reaching PBR levels by December 31, 1997.

FIGURE 11

**RELATIONSHIP BETWEEN IMMEDIATE
IMPLEMENTATION AND PHASED APPROACH**



Use of a phased strategy would allow commercial fishing and other marine activities to continue, despite the number of removals being greater than the PBR, while also allowing stocks to rebuild by reducing total annual removals. The gradual reduction of removals will occur through gear modifications and/or spatial and temporal closures. In short, NMFS' overall conservation goal will be achieved without undue economic impacts to the commercial fishing industry.

Applicability to Native Americans

Marine mammals are incidentally taken in commercial and subsistence fishing operations by Native Americans. Some Native American groups believe that the MMPA does not apply to their fishing operations in traditional fishing areas. In addition, there are persistent questions as to whether Northwest Treaty Indians have treaty rights to take marine mammals for subsistence purposes, as the current subsistence exception in the MMPA only addresses Alaska natives. In the proposal, NMFS determined that it must consider all takes of marine mammals, by Native Americans as well as others, to prevent the involved marine mammal stocks from being disadvantaged.

Some commenters stated that changes in subsistence takes should be considered in any comprehensive scheme. Under the proposal, any amendments to the MMPA to establish a new proposal to govern the incidental taking of marine mammals during

commercial fishing operations should (1) address whether all or part of the requirements for authorizing the incidental take of marine mammals, including permit or other authorization requirements, fees, and the application of fishery restrictions and closures, apply to Native Americans, especially those exercising treaty fishing rights; and (2) specify which of the existing prohibitions in the MMPA are intended to apply to Native Americans and take precedence over treaty Indian rights. The initial proposal would not affect exemptions for Alaskan natives as described in section 101(b) of the MMPA.

As described in the Allocating PBRs section above, NMFS is proposing to take a wide range of actions to reduce all sources of removals under this proposal. To be successful in protecting marine mammal stocks, the proposal must regulate all sources of removals in some fashion. In general, the comments supported a comprehensive approach to resource management that addressed all sources of removals and did not single out some sources and eliminate others which could have a significant impact on removals.



UNITED STATES DEPARTMENT
National Oceanic and Atmospher

AGENDA C-1(c)
DECEMBER 1991

National Marine Fisheries Service

P.O. Box 21685

Juneau, Alaska 99802-1685

October 24, 1991

Clarence G. Pautzke
Executive Director
P.O. Box 103136
Anchorage, Alaska 99510

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Dear Clarence,

We have transmitted to your office the proposed rulemaking for Amendment 25 to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska, and Amendment 20 to the FMP for the Groundfish of the Bering Sea and Aleutian Islands Area Groundfish. These are the Steller sea lion protection amendments.

As we indicated in the transmittal letter, the rulemaking proposes, in part, to prohibit trawling within 10 nautical miles (nm) of sea lion rookeries in the Gulf of Alaska, the Bering Sea, and the Aleutian Islands area. This change, while not in conflict with the language of the text for Amendments 20 and 25, differs from the Council recommended implementing regulation for Amendment 20. The Council's recommended regulation had limited the prohibition associated with the Aleutian Islands to retention of pollock while trawling within 10 nm of the sea lion rookeries, but would have allowed continued trawling for other groundfish within the protected areas.

Our proposed change makes the Aleutian Islands prohibition consistent with the same prohibition proposed by the Council for the sea lion rookeries in the Bering Sea and in the Gulf of Alaska. We will be requesting comments on this change from the Council, as well as comments from the public during the comment period.

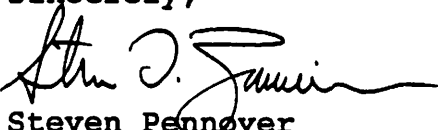
We believe our proposed change is necessary for two reasons. First, the problem of the sea lion decline, as discussed in the environmental assessment prepared for these amendments, pertains to the Aleutian Islands, the Bering Sea, and the Gulf of Alaska. Although causes for the decline in the sea lion population are not understood, adverse interactions between fishermen and sea lions are possible within all three areas. The environmental assessment discusses possible gear entanglements and reduced food availability among these adverse interactions. Reducing the likelihood of adverse fishery-related effects to sea lions forms the basis for the trawl closures within 10 nm of the sea lion rookeries. We have no information to expect that these interactions would be less important in the Aleutian Islands. In fact, NMFS information from the 1991 fishery suggests the opposite is true; as of April 1991, all of the observed 1991 groundfish fishery lethal incidental takes of sea lions (six animals) occurred within 10 nm of Aleutian Island sea lion rookeries.



Second, we have a real concern about the enforceability of the Council's recommendation that would prohibit retention of pollock on board vessels when trawling within 10 nm of the rookeries. Although we could establish an enforcement program through the use of recordkeeping requirements, such enforcement is only effective if vessels can be boarded and their records inspected. Given available enforcement resources, however, we do not believe enforcement would be adequate without undermining enforcement elsewhere. Although still difficult, aerial surveillance would render total closures to trawling more enforceable.

Although we are concerned about potential economic losses to certain groundfish fisheries, e.g. the Atka mackerel fishery, the decline in the sea lion population is such a serious matter, we must aggressively take steps to reduce fishery impacts on the population. At this time, we believe that the reasons justifying total trawl closures within 10 nm of the Gulf of Alaska and Bering Sea rookeries also apply to rookeries in the Aleutian Islands. The Council will have opportunity to comment on the rulemaking at its December Council meeting. The final implementing regulations could be changed to reflect comments received.

Sincerely,

for: 
Steven Pennoyer
Director, Alaska Region

Possible Schedule for Amendment 2025
(Sea Lion Protective Measures)

September 27, 1991	Council adoption of Amendments 20 and 25.
October 30, 1991	Express mail amendment package to FCM.
October 31, 1991	Day 0. Receipt Date. The Receipt Date means the 5th day after the day on which the Council transmits the amendment to the Secretary. Day 1 starts the day after the Receipt date.
November 1-15	15 initial review.
November 15, 1991	Day 15. Publish proposed regulations in the Federal Register for a 45-day comment period,
December 30, 1991	Day 60 (Sunday). Comment period ends.
Dec 31 - Jan 17	14 working days, not counting New Year's and a week end. Approve the amendments and file final regulations with the Office of the Federal Register. Approval of the amendments may occur at any time subsequent to the 60th day after the receipt date and before the 95th day from the receipt date.
January 20, 1992	Cooling off period waived. Regulations made effective. Note January 20 (Monday) is a Federal holiday, so regulations must be filed January 17 (Friday).

Billing Code: 3510-22

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 672 and 675

[Docket No.]

RIN 0648-

Groundfish of the Gulf of Alaska, and Groundfish Fishery of the
Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) proposes regulations to implement Amendment 25 to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and Amendment 20 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. These regulations are proposed to implement the following amendment measures: (1) year round trawl closures in the Gulf of Alaska and Bering Sea/Aleutian Islands area within 10 nautical miles (nm) of key Steller sea lion rookeries; and (2) new Gulf of Alaska pollock management districts, and a limitation on pollock seasonal harvest allowances specified for these districts. These actions are necessary to minimize potential adverse effects of groundfish fisheries on Steller sea lions. They are intended to further the goals and objectives contained in both FMPs that govern these fisheries.

DATE: Comments are invited until [insert date 45 days after date of filing for public inspection by the Office of the Federal Register].

ADDRESS: Comments may be sent to Dale R. Evans, Chief, Fishery Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Individual copies of proposed Amendments 20 and 25 and the associated environmental assessment/regulatory impact review/initial regulatory flexibility analyses (EA/RIR/IRFAs) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. Comments on the environmental assessments are particularly requested.

FOR FURTHER INFORMATION CONTACT: Dale R. Evans, Chief, Fishery Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands Area (BSAI) are managed by the Secretary according to FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by

regulations for the foreign fishery at 50 CFR Part 611 and for the U.S. fishery at 50 CFR Parts 672 and 675. General regulations that also pertain to the U.S. fishery are implemented at 50 CFR Part 620.

At times, amendments to the FMPs and/or their implementing regulations are necessary to respond to fishery conservation and management issues. Amendments 20 and 25 to the two groundfish FMPs are proposed to minimize potential impacts of the groundfish fisheries on Steller sea lions (sea lions).

The BSAI and GOA groundfish fisheries developed in the geographic area that has historically supported the majority of the sea lion breeding population. In this same geographic area, the number of sea lions counted on rookeries declined about 78 percent during the years 1956-1990. Causes of the observed decline are not known, but could be related to changes in the sea lion's food availability, intentional killing, incidental take by fishing gear, and disease. In response to the population declines, sea lions have been listed as threatened under authority of the Endangered Species Act (55 FR 49204, November 26, 1990).

Sea lions and commercial fisheries are known to interact in ways that may be detrimental to both fishermen and sea lions. Potential adverse effects of the Alaska groundfish fishery on sea lions include: (1) reduction of food availability (quantity and/or

quality) due to groundfish harvests, (2) unintentional entanglement of sea lions in fishing gear, (3) intentional harassment (including killing and wounding) of animals by fishermen, and (4) disturbance by vessels and fishing operations in rookery and foraging areas that are important to sea lions.

During its September 23-29, 1991, meeting, the Council reviewed information and analyses contained in draft EA/RIR/IRFAs that were prepared to analyze possible groundfish management measures that might be implemented for purposes of affording protection to sea lions. The Council recognized that actual reasons for declines in sea lion populations are not known, but that changes in the conduct of the groundfish fisheries should be implemented in an attempt to mitigate potential impacts of groundfish fishing on sea lions. Consequently, the Council considered measures that would: (1) geographically separate groundfish fishing from important sea lion foraging habitat, and (2) spread the fishing effort, both geographically and over time, preventing adverse effect that might result from intense fisheries in localized areas.

The Council reviewed actions taken by NMFS to-date to afford more protection for sea lions. NMFS implemented the following conservation measures coincident with the 1990 "threatened" listing under the Endangered Species Act: (1) all vessel entry within 3 nm of sea lion rookeries in the GOA and BSAI was prohibited;

(2) shooting at or near sea lions was prohibited; and (3) the allowable level of incidental sea lion mortality resulting from commercial fisheries in Alaskan waters was reduced. On June 19, 1991, NMFS implemented an emergency rule under the authority of the Magnuson Act that prohibited groundfish trawling within 10 nm of GOA sea lion rookeries, and placed further time and area constraints on the GOA pollock harvest (56 FR 28112). These measures will expire on December 18, 1991.

The Council considered testimony from its Scientific and Statistical Committee, Advisory Panel, and representatives of the fishing industry concerning possible management measures that might better protect sea lions. The Council also heard testimony from NMFS officials concerning proposed management measures analyzed in the draft EA/RIR/IRFAs prepared for Council consideration.

After considerable discussion, the Council adopted the following management measures:

(1) Areas would be closed to fishing by vessels using trawl gear within 10 nm of sea lion rookeries located in the GOA and in the Bering Sea subarea of the BSAI; in the Aleutian Islands subarea of the BSAI; however, pollock retention by any vessel using trawl gear would be prohibited during the period that vessel fished within 10 nm of sea lion rookeries located in the Aleutian Islands

subarea. Fishing by vessels using hook-and-line and pot gear would still be allowed between 3 and 10 nm of rookery sites in the GOA and BSAI.

(2) In the GOA, the specified total allowable catch (TAC) for pollock in the combined Western/Central (W/C) Regulatory Area, would be further divided into three pollock management districts. Further, the existing Shelikof Strait District, for which an interim pollock TAC has been established for purposes of collecting data during the pollock roe season, would be rescinded. In addition, a limitation would be imposed on the amount of a pollock quarterly harvest allowance that might be available in any of the three GOA pollock management districts as a result of unharvested pollock from previous quarterly allowances.

A description of, and the reasons for, each of these measures follow:

Fishing restrictions within 10 nm of sea lion rookeries.

Year-round closures to vessels using trawl gear within 10 nm of rookeries located in the GOA and in the Bering Sea subarea are intended to geographically separate trawl fishing operations from important sea lion breeding and foraging habitat, thereby reducing any effects that groundfish trawling may have on sea lions, particularly to their foraging success. In the Aleutian Islands

subarea, the prohibition to pollock retention by any vessel using trawl gear if it fished within 10 nm of sea lion rookeries is intended to reduce removals of pollock, which are a large component of the sea lion diet. Continued harvests of other groundfish, principally Atka mackerel, would be allowed to continue.

These restrictions near sea lion rookeries highlight the importance for sea lion breeding, pupping, and foraging. Sea lions also use rookery sites during the non-reproductive season for rest and refuge. Protection of rookeries are essential to the survival and recovery of sea lion populations.

The proposed trawl closures are intended to reduce likely interactions between vessels and sea lions. These interactions can result in unintentional capture and mortality of sea lions. An estimated 21,000 sea lions were killed incidental to BSAI and GOA trawl fisheries between 1973 and 1988. Such incidental mortality may have been a contributing cause in the observed sea lion decline of the sea lion population in the BSAI and 6 percent of the decline in the GOA during this period. Available data indicate that the number of sea lions killed incidental to BSAI and GOA groundfish fisheries has declined significantly in recent years. Based on fishery observer data, NMFS estimates that 23 sea lions were taken incidental to BSAI and GOA groundfish trawl fisheries during 1990. Available NMFS data indicate that a similar number will be taken in 1991.

Deliberate killing of sea lions by fishermen and others is also considered to be a possible contributing factor in the observed population decline. In 1990, NMFS prohibited intentional killing or wounding of sea lions, including shooting near or at the animals. This prohibition, as well as the 3-mile rookery buffer zones, have probably significantly reduced, but not entirely eliminated, this source of mortality.

The proposed closures also are intended to reduce competition between commercial groundfish fishermen and sea lions for available groundfish in important foraging habitat. The BSAI and GOA groundfish fisheries harvest fish stocks that are major components of the sea lion's diet. Large fishery harvests from areas proximal to sea lion rookeries could interfere with the sea lion foraging efficiency.

The Council considered whether larger or smaller closures than 10 nm should be implemented. Information based on satellite data obtained from nursing female sea lions during the breeding season showed that these sea lions swim an average distance of eight nm on a feeding trip. Ten nm approximates this average. Although other observations indicate that sea lions can forage beyond 10 nm from rookeries, the proposed closures protect zones proximal to rookeries, which are likely to be important feeding areas throughout the year.

The Council considered whether all gear types should be prohibited within the 10-mile closures. It determined that groundfish harvests by vessels using hook-and-line and pot gear within the closed areas would continue without restriction. The primary reasons for excluding only trawl gear are: (1) the trawl fishery harvests the majority of the catch, (2) the risk of lethal incidental take of sea lions in non-trawl gear is low, and (3) groundfish harvest with trawl gear results in the bycatch of other non-target species, such as juvenile pollock, squid, octopus, and herring that are also important prey items for sea lions.

Secretarial determinations

With one exception, the Secretary preliminarily concurs with the Council recommendation to restrict trawling around sea lion rookeries located in the GOA and the Bering Sea subarea. With respect to measures applying to the Aleutian Islands subarea, however, the Secretary notes the Council's recommendation would prohibit retention of pollock by any vessel using trawl gear when it fished within the 10 nm of sea lion rookeries.

The Secretary has determined that the Aleutian Island measure would be inconsistent with the reasons justifying total closures around the GOA and Bering Sea subarea rookeries, including the need to prevent unintentional capture and possible sea lion mortality. Allowing trawling within 10 nm of the Aleutian Island rookeries for

non-pollock species would not geographically separate important sea lion foraging habitat from the trawl fleet as intended, and that negative interactions may occur. In fact, NMFS information from the 1991 fishery through April 1991, shows that all of the observed 1991 groundfish fishery lethal incidental takes of sea lions (six animals) occurred within 10 nm of Aleutian Island sea lion rookeries. Adverse interactions, therefore, between trawl vessels and sea lions might be expected independent of the groundfish species being fished.

The Secretary also has determined that prohibiting retention of pollock during the period that vessels trawl in any of the Aleutian Island closures would be difficult to enforce, given existing agency enforcement resources. While the Secretary notes that vessel operators could be required to maintain records of their fishing locations and catches in the closed areas, violations of proper record keeping are difficult to detect. Attempts to closely monitor vessels to determine actual fishing locations to verify whether they had entered any of the fifteen rookeries in the Aleutian Island subarea would be extremely labor intensive.

The Secretary, therefore, is proposing that all trawling for groundfish be prohibited within 10 nm of sea lion rookeries located in the Aleutian Islands subarea, which is the same prohibition proposed for the Bering Sea subarea and the GOA.

The Secretary notes that the Council made its recommendation after reviewing industry concerns that the TAC specified for Atka mackerel, and perhaps for other groundfish species as well, might not be achieved, because most of the Atka mackerel fishery occurs within 10 nm of some of the rookeries. As summarized in the EA/RIR/IRFA prepared for this measure, 84 percent of the Atka mackerel harvest occurred within 10 nm during 1990. The Secretary notes that historical catch information in the EA/RIR/EA shows that more than 50 percent of the Atka mackerel harvest has occurred outside of 10 nm during 5 years of the 1980-1989 period. Not all of the available harvest is expected to be foregone, therefore, as a result of this proposal to close all trawling with 10 nm of sea lion rookeries in the Aleutian Islands subarea.

Establishment of new pollock management districts in the Gulf of Alaska, and limitations on seasonal pollock harvests.

New pollock management districts -- During the 1970's, foreign pollock fisheries harvested large quantities of pollock annually from offshore areas throughout the Gulf of Alaska. Catches by foreign vessels, however, were relatively evenly distributed throughout the year. With the domestic displacement of foreign fishing operations in the early 1980s, the fishery concentrated in Shelikof Strait, where it was conducted primarily in late fall and early spring. Thus, the pollock fisheries became geographically and temporally concentrated compared to the 1970s. Local

depletions of pollock and other sea lion prey may have occurred due to this concentration of fishing effort, which could have contributed to the decline of sea lion populations. For this reason, geographical and temporal restrictions were imposed on the Gulf of Alaska pollock fishery by emergency rule in June 1991.

The Council determined that measures that would further geographically spread pollock fishing across wider areas might be more effective to protect sea lions, given the importance of pollock in their diet. The Council recommended, therefore, that three new management districts in the combined W/C Regulatory Area be established for purposes of managing pollock. They are proposed as follows:

Statistical Area 61 between 170° and 159° W. longitudes;
Statistical Area 62 between 159° and 154° W. longitudes; and
Statistical Area 63 between 154° and 147° W. longitudes.

These statistical areas are already defined in 50 CFR 672.2. An existing management district, named Shelikof Strait, would be removed. This district had been in place to promote pollock harvests by specifying a numerically small TAC in an area where a significant roe fishery had existed in prior years.

The purpose of these new districts is to geographically spread fishing effort across a wider area to prevent an entire quarterly allowance of pollock from being harvested in local areas within the

W/C Regulatory Area. Otherwise, such harvests could result in local depletion of pollock, albeit temporarily, which may adversely affect the feeding success of sea lions. This measure provides protection to the four major sea lion rookeries (on Sugarloaf, Marmot, and the Chowiet and Chirikof Islands) in the Gulf of Alaska where sea lion populations have shown the steepest recent declines. The limited data available suggest that sea lions from these four rookeries feed in or around important commercial fishing areas on the east side of Kodiak Island, namely Barnabus Gully, Chiniak Gully, Marmot Gully, and Marmot Bay. These areas have accounted for a high proportion of pollock catch since 1987. Spreading fishing effort geographically as well as quarterly allocations of pollock TAC could reduce the potential impacts on sea lions from localized high levels of fish removal.

The Council's recommendation is a change from an existing measure, which requires that a single pollock TAC be specified for the W/C Regulatory Area. This change would now require that the pollock TAC specified for the W/C Regulatory Area be further apportioned among the three pollock management districts in amounts proportional to distribution of biomass observed during the most recent NMFS pollock stock assessment.

Limitations on seasonal pollock harvests -- The Council reviewed existing measures that would temporally spread pollock fishing effort. Existing regulations at 50 CFR 672.20(a)(2)(iv)

require the pollock TAC for the W/C Regulatory Areas to be divided equally into four quarterly allowances. Existing regulations also require that any unharvested amount of a quarterly allowance, or excessive harvests of a quarterly allowance, will be added to, or subtracted from, the subsequent quarters' allowances in equal proportions.

To prevent excessive accumulation of any quarterly allowance, the Council recommended to limit the maximum amount of any quarterly allowance to 150 percent of the initial quarterly allowance. For example, if each initial quarterly allowance of each pollock TAC is 10,000 mt in each of the pollock management districts, the maximum amount of any subsequent quarterly allowance resulting from the accumulations of pollock unharvested in previous quarters is 15,000 mt in each of the three districts. The purpose of this measure is to prevent excessive harvests of pollock in any quarter, which could temporarily reduce amounts of food available for sea lions, or which could limit their feeding efficiency.

Secretarial determinations

Except as noted above, the Secretary preliminarily concurs with the Council's recommendations, which geographically and temporally spread fishing effort for pollock. Both of these measures could afford more protection for sea lions.

The Secretary also is proposing certain other regulatory changes in 50 CFR part 672 as necessary to implement the above sea lion protection measures. Definitions of a "trip" at 50 CFR 672.20(h) are proposed to be changed for purposes of implementing directed fishing standards for pollock. These measures are designed to mitigate potential, but as yet unproved, adverse effects on sea lions.

Classification

Section 304(a)(1)(C) of the Magnuson Act, as amended by Pub. L. 99-659, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the FMP amendment and regulations. At this time the Secretary has not determined that the FMP amendments these regulations would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared environmental assessments (EAs) for these FMP amendments that discuss the impact on the environment as a result of this rule. A copy of the EAs may be obtained from the Council at the address above and comments on them are requested.

On April 19, 1991, NMFS concluded formal Section 7 Consultation on the BSAI and GOA groundfish FMPs and fisheries. The biological opinions issued for these consultations concluded that the FMPs and fisheries are not likely to jeopardize the continued existence and recovery of any endangered or threatened species under the jurisdiction of NMFS. Formal Section 7 Consultation also has been conducted on the Gulf of Alaska 1991 pollock TAC (June 5, 1991) and the fourth quarter pollock fishery (September 20, 1991). These biological opinions concluded that the 1991 Gulf of Alaska pollock fishery, under the time and area constraints imposed by NMFS, is not likely to jeopardize the continued existence of Steller sea lions. Adoption of the management measures described in the proposed amendments will not affect listed species in a way that was not already considered in the aforementioned biological opinions. In fact, these management measures are designed to reduce the adverse effects of the Bering Sea/Aleutian Islands and Gulf of Alaska groundfish fisheries on Steller sea lions, and thus, may aid recovery of the species. NMFS has determined that no further Section 7 consultation is required for adoption of these FMP amendments.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that the proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The Council prepared a regulatory impact review that concludes that none of the proposed measures in this rule would cause impacts

considered significant for purposes of this Executive Order. A copy of this review is available from the Council at the address listed above.

The Council prepared an initial regulatory flexibility analysis as part of the regulatory impact review which concludes that this proposed rule, if adopted, would have significant effects on small entities. A copy of this analysis is available from the Council at the address listed above.

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels.

Dated:

Assistant Administrator for Fisheries

For the reasons set out in the preamble, 50 CFR Parts 672 and 675 are proposed to be amended as follows:

PART 672--GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 672.2, the definition of statistical area is amended by deleting Statistical Area 621.

3. In § 672.20, paragraphs (a)(2)(iv) and (h)(2) are amended and paragraph (i)(4) is added from to read as follows:

§ 672.20 General limitations

(a) * * *

(2) * * *

(iv) The TAC for pollock in the combined Western and Central Regulatory Areas will be apportioned among statistical areas 61, 62, and 63 in proportion to the distribution of the pollock biomass as determined by the most recent NMFS surveys. Each apportionment will be divided equally into the four quarterly reporting periods of the fishing year. Within any fishing year, any unharvested amount of any quarterly allowance of TACs will be added in equal proportions to the quarterly allowances of the following quarters, resulting in a sum for each quarter not to exceed 150 percent of

the initial quarterly allowance. Within any fishing year, harvests in excess of a quarterly allowance of any TAC will be deducted in equal proportions from the quarterly allowances of each of the remaining quarters of that fishing year.

* * * * *

(h) * * *

(2) Trip. For purposes of this paragraph, the operator is engaged in a single fishing trip from the commencement of or the continuation of fishing for any groundfish after the effective date of a notice prohibiting directed fishing under paragraph (c)(2) or (f)(1) of this section prohibiting directed fishing, until any offload or transfer of any fish or fish product from that vessel, or until the vessel enters or leaves a regulatory area, or district, or statistical area to which a directed fishing prohibition applies, whichever occurs first.

(i) * * *

(4) Trip. For purposes of this paragraph, a trip is defined as set forth under paragraph (h)(2) of this section.

4. In § 672.24, paragraph (e) is added to read as follows:

§ 672.24 Gear limitations.

* * * * *

(e) Steller sea lion protection areas. Trawling is prohibited year round in the Gulf of Alaska within 10 nautical miles of each of the following fourteen Steller sea lion rookeries:

Island	<u>From</u>		<u>To</u>	
	Lat.	Long.	Lat.	Long.
Outer I.	59°20.5 N	150°23.0 W	59°21.0 N	150°24.5 W
Sugarloaf I.	58°53.0 N	152°02.0 W		
Marmot I.	58°14.5 N	151°47.5 W	58°10.0 N	151°51.0 W
Chirikof I.	55°46.5 N	155°39.5 W	55°46.5 W	155°43.0 W
Chowiet I.	56°00.5 N	156°41.5 W	56°00.5 N	156°42.0 W
Atkins I.	55°03.5 N	159°18.5 W		
Chernabura I.	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W
Pinnacle Rock	54°46.0 N	161°46.0 W		
Clubbing Rks-N	54°43.0 N	162°26.5 W		
Clubbing Rks-S	54°42.0 N	162°26.5 W		
Ugamak I.	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W
Akun I.	54°17.5 N	165°34.0 W	54°18.0 N	165°31.0 W
Akutan I.	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W
Ogchui I.	53°00.0 N	168°24.0 W		

Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates: if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

* * * * *

PART 675--GROUND FISH FISHERY OF THE BERING SEA AND ALEUTIANS

ISLANDS AREA

5. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1901 et seq.

6. In § 675.24, paragraph (f) is added to read as follows:

§675.24 Gear limitations.

* * *

(f) Steller sea lion protection areas. (1) Bering Subarea. Trawling is prohibited year round within 10 nautical miles of each of the following eight Steller sea lion rookeries:

Island	Lat.	<u>From</u> Long.	<u>To</u> Lat.	Long.
Sea Lion Rks	55°28.0 N	163°12.0 W		
Ugamak I.	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W
Akun I.	54°17.5 N	165°34.0 W	54°18.0 N	165°31.0 W
Akutan I.	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W
Bogoslof I.	53°56.0 N	168°02.0 W		
Ogchul I.	53°00.0 N	168°24.0 W		
Adugak I.	52°55.0 N	169°10.5 W		
Walrus I.	57°11.0 N	169°56.0 W		

Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

(ii) Aleutian Islands subarea. Trawling is prohibited year round within 10 nautical miles of each of the following 15 Steller sea lion rookeries:

Island	Lat.	<u>From</u> Long.	<u>To</u> Lat.	Long.
Yunaska I.	52°42.0 N	170°38.5 W	52°41.0 N	170°34.5 W
Seguam I.	52°21.0 N	172°35.0 W	52°21.0 N	172°33.0 W
Agligadak I.	52°06.25N	172°54.0 W		
Kasatochi I.	52°10.0 N	175°31.0 W	52°10.5 N	175°29.0 W
Adak I.	51°36.5 N	176°58.5 W	51°38.0 N	176°59.5 W
Gramp Rock	51°29.0 N	178°20.5 W		
Tag I.	51°33.5 N	178°34.5 W		
Ulak I.	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W
Semisopochnoi	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E
Semisopochnoi	52°01.5 N	179°37.5 E	52°01.5 N	179°39.0 E
Amchitka I.	51°22.5 N	179°28.0 E	51°22.0 N	179°25.0 E
Amchitka I.	51°32.5 N	178°50.0 E		
Ayugadak Pt.	51°45.5 N	178°24.5 E		
Kiska I.	51°57.5 N	177°21.0 E	51°56.5 N	177°20.0 E

Kiska I.	51°52.5 N	177°13.0 E	51°53.5 N	177°12.0 E
Buldir I.	52°20.5 N	175°57.0 E	52°23.5 N	175°51.0 E
Agattu I.	52°24.0 N	173°21.5 E		
Agattu I.	52°23.5 N	173°43.5 E	52°22.0 N	173°41.0 E
Attu I.	52°57.5 N	172°31.5 E	52°54.5 N	172°28.5 E

Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

Filename: 2025.pr

December 8, 1991

Discussion of Sablefish/Halibut IFQ program, "General Provisions for Catcher Boats Following Initial Allocation"

Section 2(C)(3)(iii)

Bob Alverson: You identify corporations and partnerships, clarification is indicated as needed as to whether the same provisions should apply to partnerships as we have applied to corporations. Well, let me just read the whole thing, it's not that long:

The Council has indicated that the death of a owner will not alter a corporate structure for the purpose of retaining grandfather rights to use hired skippers. Clarification is needed as to whether the same provision should apply to partnerships. The accidental death of a partner would also seem to be in the same light. It may be unduly discriminatory not to recognize the same circumstances in the two situations.

Mr. Chairman, I would move that we recognize the same provisions for partnerships in the case of death as we do in corporations and in addition that we also recognize if a shareholder or a partner buys out a existing shareholder or partner, that the partnership or corporation would still retain grandfather rights.

?: Second.

Alverson: If I could speak to the latter portion. If a father and son are partners, or if they are not, if you have two friends that are partners and one wants to sell out, I don't see any difference between that and the situation of someone vacating in terms of death in terms of the rights of that particular partnership. You have a lot of situations where a older person has formed a partnership with a younger crewman that's coming along, in order to phase out, and I think it would be consistent.

Clem Tillion: It's kind of like Patty's knife. It's had three new blades and two new handles and it's still Patty's knife? Now somewhere it's gotta end and so therefore, you can see the one by death, that's one that can't be played, but otherwise what you're doing is allowing the continuation of the grandfather clause for an indefinite period of time as they change owners and so I think you're stepping into a very dangerous one. The first part of your motion makes eminently good sense, they should be treated as a corporation. But when you start talking about selling out in a partnership, what happens then the next year when the other partner sells out and you've got a grandfather right that's different than the rest of the fleet that goes on forever. I don't think you're thinking it through.

Alverson: Perhaps I should bifurcate the motion, Mr. Chairman.

Lauber: If you'd like to. O.K., without objection we'll separate the motion into two parts, one being the death of a partner.

Pereyra: I can understand where Mr. Tillion's coming from, but the way I read this, that would not allow this sort of indefinite continuance of this grandfather corporation because it still does not allow the inclusion of new members, so at some point in time all the members are gone, and so I think Mr. Alverson's motion is definitely in order. . .the other thing I'd like to add is that in normal estate planning, where you've got father and son relationships in corporations or partnerships it's reasonable to allow some shifting of ownership with time from the father to the son, this is I think a normal sort of thing and I don't think we as a body should be sitting and interjecting ourselves in the way in which individuals want to manage their estates.

Hegge: I'm kind of curious, Bob, what happens in the case of husband and wife or father and child if the father is killed or passes away, whatever, does this address this?

Alverson: Well, I don't think it addresses it, but in my opinion if you had for instance a . . . we're addressing partnerships and corporations, your situation if a new ITQ owner were to own ITQs or Qs or whatever the hell they're called, and he dies, the estate owns the rights and just as in the salmon limited entry program, the estate has to put that right up for sale or use it within the parameters that we've already adopted.

Hegge: I would amend your motion to include survivors. . .not survivors. . .next-of-kin, I guess.

Alverson: I don't understand what you're trying to get at. My motion is if you have three partners, or 3 shareholders and they want to buy each other out and they're condensing as time goes on, it has nothing to do with whether they'll die and. . .you know, I imagine if they all die, then different estates have 1/3 access to the assets and they have to sell them accordingly.

Hegge: . . .Going back to our original designation of recipient, it was a person which could be a corporation, partnership or individual, and it stands to reason that we're talking about the grandfather rights of an individual, owned a boat, operated it with a hired skipper, he passes away, and I guess that under this, his wife would have to go on the boat and forego and possible rights that she might have had as his partner, rather than being able to operate as they had before.

Alverson: O.K., you're suggesting upon initial allocation, that if initial allocation goes out and if it was to an individual or a corporation and the person running that vessel has passed away, that that estate would be grandfathered.

Hegge: It would seem appropriate to me, I don't know, maybe it doesn't to the rest of you, but. .

Lauber: I thought we were trying to . . .

Alverson: Can we take that up as a separate motion? I see where he's going, but. . .

Lauber: Let's see if we can't get rid of the first one, give us the first part of your motion.

Alverson: The first one would indicate that we provide the same provisions that we did for a corporation to a partnership in case of death.

Lauber: Is there any discussion on that issue? Where's the section. . .

Alverson: It's on page 5, it says, "the Council has indicated that the death of an owner will not alter a corporation structure for the purpose of retaining grandfather rights." The effect of my proposed motion would indicate that death of a partner will not alter a partnership structure for the purposes of retaining grandfather rights.

Cotter: If you want to refer to the document which is probably where we ought to be, it's on page 4, at the top of the page, you've got three subsections; (a) is corporation, (b) partnership, and (c) is individual, and if Mr. Alverson wishes to, he might just want to move similar language from corporation to partnership to address that.

Alverson: I thought I did that, Mr. Chairman.

Hegge: This is the part that I thought I was addressing because as my understanding, we're talking about retaining grandfather rights to use hired skippers, is that right?

Alverson: Yes, that's right.

Hegge: When we made that grandfather privilege, we could have made it to a corporation, we could have made to a partnership, or we could have made it to a man and his wife.

Unidentified: Wouldn't that be a partnership?

Hegge: I don't know, but if he dies, it's not really a partnership, it's a . . .

Lauber: Well, we may need an opinion from Counsel, but a marriage could be a partnership in this business but it would not have to be. Yes, you could have included it, I would think, but if you didn't, then right now I think it's only addressing a partnership. If that partnership happens to be man and wife, that's one thing, but it could be relatives or anybody else, but . . .

Hegge: The reason I'm bringing it up is that it was brought up a lot as I went around to different places, if a husband and wife or whatever owned a boat and he passes away, it's a terrible burden on her to take away her means of livelihood and force her to sell out and not even be able to utilize it while she sells out.

Lauber: Well, I understand that, but it was also a lot of discussion on this issue and the idea was to put the quota shares in the hands of the people that are in the fishery and not allow absentee owners that are using this as some method of . . . more like an investment, and it's a matter of policy, whatever you want to do, but it seems to me we were very snickety (?) about allowing leasing, and this is kind of a form of that, but because of some hardship cases with people that had incorporated for tax purposes and other things, they wanted to allow it, and . . .

Tillion: I don't think Ron is addressing what is before us. In other words, do you treat partnerships the same as corporations. I don't think there's any objection. Now, when you want to grandfather somebody who's not a . . . like your wife, if you die, if she's part of the partnership or the corporation, fine, then there's no problem; if she is not, it's the same as it is with a limited entry permit in the State of Alaska, it has to go to somebody who fishes it. So therefore, a gillnetter's widow can sell the permit or fish it herself, or transfer it to one of the kids, and that has kept fishermen behind the roller, it's not a bad system.

Pereyra: I would like to amend the motion to expand on the definition of the exempted causes. Death is certainly one cause, but in corporations and in partnerships, there are quite often clauses that if partners are removed through bankruptcy insolvency, or through legal incapacitation, that is in a sense, a death in a way of a corporate member and they are removed. So, I don't think you want to be setting up a situation where there could be a legal incapacitation of a member who's removed and that; corporation which owned initial quota share and also owned a vessel would not be able to operated, so I think it's appropriate to have that definition expanded slightly to take into consideration those . . . conditions.

Alverson: We've bifurcated this thing and I did so, it seems like Wally's motion, if he wants to make that, would be more appropriate to the second half of . . . can we, I think we ought to just act on corporation and partnerships.

Cotter: I was just going to say the same thing. The discussion that's going on regarding spouses and beneficiaries is interesting, but the motion deals with partnerships and that discussion probably belongs under individual if somebody wants to make a motion at that point and I'd suggest we move ahead with partnership and we can revisit these things if anybody wants, but let's go.

[several calls for the question]

Lauber: O.K., call the roll. We're voting on whether we would include partners as well as corporations. Is there

any objection to it? All right, hearing none, it passes.
Now, the second half of your motion, Mr. Alverson.

Alverson: Yes, it dealt with if internally to a partnership or a corporation if an individual is bought out, that the corporation or partnership would still retain grandfather rights.

Tillion: I'll withdraw any objection I had to that as long it's within the organization and does not bring in a new partner. I'd say as soon as you bring in a new partner I would objection, but if it's within the organization, like a family corporation where grandpa drops out, no objection.

Alverson: That's the intent.

Dyson: In my case, I leave; that leaves Peggy and the skipper, because he's grandfathered in; can Peggy still work that way, with a skipper?

Tillion: Yeah, she's part of your corporation anyway, I'm sure anyway, is she not? That's a consolidation by death or retirement. No problem.

Lauber: But, what you didn't want to do, Clem, is that she brings in a new partner?

Tillion: Like gets married again and brings him into the corporation.

Lauber: All right, are we ready for the question on that? Any objection? Hearing none, it passes.

Pereyra: I'd like to make a motion that we expand the definition of accepted causes, in addition to death, that we include legal bankruptcy or incapacitation.

?: Second.

Pereyra: I feel that the intent here is to make certain that [tape changeover, some lost]. . . maybe the previous motion took care of that, but I want to make certain that if there is a legal incapacitation to a member and he or she is removed as a member of the corporation that that will not cause that corporation to lose its exemption.

Tillion: Question. But you would not add new stockholders? [Pereyra: No] I think that was covered by the previous thing of letting grandfather retire, as long as you did not expand by bringing in a new. . .

Lauber: Well, I'm assuming you would be thinking in case there was a conservator or a guardian ad litem appointed. . .

Pereyra: Correct.

Lauber: . . . in the case of an individual that was incapacitated, that that wouldn't change the status of the corporation.

Pereyra: No.

Lauber: I would assume since they're acting in the stead of that individual and they're not acting on their own behalf, that it probably wouldn't have any effect. I don't have any objection to it, but I don't think it's necessary, but if it'll make you feel better. . . we could probably do it.

Cotter: What about the bankruptcy part?

Lauber: The bankruptcy part, explain that a little bit.

Pereyra: Well, I think the bankruptcy part is probably covered by the previous motion because if a person becomes bankrupt and they are removed by the other partners in the partnership, that would just be a consolidation of the partnership.

Dyson: One more question to Clem, in case of a company that's gone public and has 500 stockholders, what happens to that?

Tillion: That's a public corporation, we're covered, aren't we?

Dyson: Can any one of the 500 people be involved in this operation?

Lauber: Well, as long as they don't change hands, as long as they just keep getting fewer and fewer of them.

Tillion: They can't keep selling . . .

Alverson: Do we have any like that?

Dyson: I was just wondering. . .

Lauber: A public corporation halibut schooner? Haven't seen them listed on the big board recently.

Jay Ginter: I can't answer whether we have those kinds of corporations or not in the halibut longline business, but we did, I seem to remember talking about this in the implementation group, or else I dreamt it, I remember talking about some kind of a 5% limit so that there could be shareholders that would come in and out of a public corporation as long as those shareholders don't own more than 5%. . . that if a shareholder who owned 5% or more in the corporation or its stock, let's say, then that would constitute a change in the corporate structure.

Lauber: Kris (Norosz, IFQ Implementation Workgroup), do you know this to be a problem? The way it is now, you could sell to the existing stockholders and there would be no change in the status, it would be no problem; but you couldn't sell to someone outside of it and still have it. . .

Kris Norosz: I don't see a problem with it; I don't recall the conversation that Jay mentioned. It may be that it just happened in the Technical Team and not in the industry meeting. But, you have to keep in mind that when we were trying to deal with the corporations we didn't have the advantage of NOAA General Counsel there, so we didn't go into it in much detail, because we thought it was beyond us.

Alverson: Do we have a motion on the floor?

Lauber: No, we don't. [Discussion goes to bonafide crewmembers qualifications and CDQs]

Alverson: There's a section here called "Permit Holders," that says "the Council's preferred alternative may have the effect of granting all permit holders bonafide fixed gear crew member status. Is this the Council's intent?" I'm not sure what the Technical Team is referring to here.

Lauber: Can you enlighten us on that?

Marcus Hartley: We talked about that. It actually does not have the effect of granting all those permit holders. . .we thought maybe that would be one way to take care of the people that fished in the halibut landings with bonafide crew member definitions not being able to purchase quota shares except. . .I think, well, that motion was not a unanimous motion. The industry team did not like that idea; I think you've taken care of it by dropping the 4-month, . . . requirement to some degree, although still it's certainly feasible that many halibut fishermen, if that's all they've done, won't have 15 months fishing experience.