

coverage will depend on the availability of funds.

*Comment 3:* The Bering Sea and the Aleutian Islands trawl fisheries should be separated for the purpose of setting categories. Many of the commercial fishing quotas are set separately for the Bering Sea and Aleutian districts and the ecosystems have somewhat different characteristics. There is no justification for declaring both areas the same fishery for purposes of categorization if marine mammal interactions occur in only one area. To classify all the Bering Sea and Aleutian trawl fisheries as the same category for marine mammal interactions that occur in only one target fishery or in only one portion of the area is arbitrary and capricious and inflicts unwarranted regulations on a large number of vessels.

*Response:* Splitting the fishery into smaller statistical areas would isolate the portions of those fisheries that are responsible for marine mammal takes. However, because the Bering Sea and Aleutian Islands statistical areas are contiguous and most participants fish in both areas, categorizing the two areas separately would have little practical value and would make management difficult.

*Comment 4:* Being classified as a Category I or II fishery imposes serious reporting requirements on many small business entities.

*Response:* Since the publication of the final implementing regulations for section 118 of the MMPA, on August 30, 1995, logbooks of fishing effort and marine mammal interactions are no longer required to be kept and turned in annually. The reporting requirements now in effect have been reduced to submitting a one-page report on a form supplied by NMFS within 48 hours of returning from the fishing trip (or from tending non-vessel gear) in which an incidental injury or mortality to a marine mammal occurred. Thus, the reporting requirements are limited to occurrences of an injury or mortality to a marine mammal in the course of fishing operations.

*Comment 5:* Although commenters supported the use of scientific evidence to determine the total allowable fishery induced mortality for a marine mammal stock, serious questions were raised regarding the data used to classify the Bering Sea/Aleutian Island (BSAI) groundfish trawl fishery. The take of two killer whales during the period 1990–93 resulted in moving BSAI trawl fisheries from Category III to Category II. However, the 1995 marine mammal stock assessment for killer whales indicates that the minimum population estimate is based on a direct count, with

no available correction factors.

Commenters also indicated that no reliable data on the population abundance of killer whale stocks were available and neither was a reliable estimate of maximum net productivity rate. Therefore the use of overly conservative measures in setting the acceptable level of fishing induced mortality should be discouraged. Better and more relevant data are needed before reclassifying all BSAI trawl fisheries as Category II.

In the NMFS stock assessment report (SAR) for the Alaska region, the killer whale chapter is divided into two sections, resident (759 animals) and non-resident (245 animals) populations. The total population size is 1004 animals. The total killer whale take is two animals—the population from which each was taken is listed as unknown. A commenter calculated the PBR level based on the entire population ( $1004 \times 0.02 \times 0.5$ ) which resulted in a PBR level of 10.4 animals. The annual take as reported in the SAR is 0.8 animals per year. This number (0.8) divided by 10.4 animals (PBR) results in a take of 7.69 percent of PBR, not 10 percent as stated in the proposed LOF. It should be noted that the two sections of the killer whale chapter each calculate PBR level separately, 7.6 for resident killer whales and 2.4 for the non-resident population. The proposed LOF notice does not say which number was used to move the BSAI trawl fishery into Category II. Obviously, the killer whale population was not considered as a whole.

*Response:* NMFS believes that calculating the percentages of the PBR level separately for the two killer whale stocks is the most risk-averse approach.

The BSAI groundfish trawl fishery will be classified in Category III. This fishery was proposed to be classified in Category II in the proposed LOF based on serious injuries and mortalities of killer whales. However, because the level of serious injury and mortality to killer whales in this fishery is low (0.8 to 1.4 animals per year), the fishery is observed with over 60 percent observer coverage, and the population estimates for both the resident and transient stocks of killer whales are direct counts of known individuals and thus underestimate the total stock size, it is likely that the serious injury or mortality of approximately one killer whale per year is not adversely impacting the population. In addition, the final SARs for resident and transient killer whales notes that these stocks are not considered to be strategic.

If information becomes available that indicates that this observed fishery has

excessive incidental serious injuries or mortalities from killer whale stocks or other stocks of marine mammals, it will be reclassified as necessary.

*Comment 6:* The August 9, 1994, draft stock assessment shows “zero” Pacific coast fishery mortalities of humpback whales. Yet the current proposed LOF would reclassify the Southeast Alaska salmon purse seine fishery from Category III to Category II, because “total known humpback whale mortality and serious injury level across all fisheries exceed 10 percent of this stock’s PBR, and the known serious injury level for this fishery is 0.4 animals per year.” The EA implies that the take in this fishery was documented through a single voluntary report, but does not describe the nature of the interaction (i.e., mortality, entanglement, etc). According to the proposed LOF, the Southeast Alaska salmon drift gillnet fishery also has a known mortality and serious injury rate of 0.13 animals per year, but the EA makes no mention of any humpback takes by this fishery.

*Response:* The reports of humpback whale mortalities in the Southeast Alaska purse seine fishery were identified after the publication of the August 9, 1994 draft stock assessments. There were two mortalities of humpback whales in this fishery, one in 1989 and one in 1994. In both cases, individual whales became entangled in purse seine nets being actively fished. One whale was entangled in the bunt and subsequently in the net. The second whale became entangled in the lead line and then wrapped in the net as it tried to free itself. The fishers involved tried to free the whales, but were unsuccessful. Data on humpback whale entanglements in the Southeast Alaska salmon drift gillnet fishery came from stranding network data, but, in addition, there have been several cases where fishers have notified the Coast Guard or NMFS, and NMFS personnel assisted with freeing the whales. This kind of cooperation is greatly appreciated by NMFS.

*Comment 7:* One commenter was disturbed by the weight one unsubstantiated anecdotal report of a marine mammal take was given in determining the category status of the Southeast Alaska salmon purse seine fishery and believed the procedures used to document and authenticate this report were seriously lacking. The commenter asserted that while NMFS may be erring on the side of caution because humpback whales are a strategic stock and because of a low population estimate, a low estimate does not validate an unconfirmed