

report. Based on the commenter's experience, mortalities and serious injuries to humpback whales due to interactions with purse seine gear are extremely rare, and seiners will expend a great deal of effort to avoid any interaction with whales because of damage to the gear and a substantial loss of fishing time. The commenter believed that a Category III listing is more appropriate for this fishery. Even if the Southeast Alaska salmon purse seine fishery were to remain in Category III, NMFS could still use alternative monitoring methods to acquire reliable information on the fishery's humpback interactions.

*Response:* Fisheries are classified based on the annual number of incidental serious injuries and mortalities relative to the PBR level for each marine mammal stock. Thus, a fishery could be placed in Category I or II as a result of a high mortality level or a low population abundance estimate, or some combination of the two. The weight that any number of serious injuries or mortalities in a given marine mammal stock has on categorization of fisheries is directly related to the PBR level for that stock. In the case of the central North Pacific stock of humpback whales, the PBR level is 2.8 animals. There were three mortalities reported for all fisheries between 1989 and 1994. In a Tier I categorization evaluation, this calculates to a rate of 0.5 animals per year, or 17.9 percent of the PBR level. Because this rate is higher than 10 percent of the PBR level, the effects of individual fisheries must be evaluated. There were two reported mortalities to humpbacks in the Southeast Alaska purse seine fishery, one in 1989 and one in 1994. The mortality rate for this fishery calculates to 0.33 animals per year, or 11.9 percent of the PBR level. Because this rate is greater than 1 percent, but less than 50 percent of the PBR level, the fishery is placed in Category II.

NMFS does not consider these Category III reports to be unreliable and has full confidence in their veracity. These data were reported by a crew member aboard the vessel(s) that interacted with the whales. The reports have been given no special treatment or additional weight.

NMFS agrees that the mortality and serious injury rate of humpbacks in the Southeast Alaska salmon purse seine fishery were low. However, the annual rate of serious injury and mortality in this fishery does fit the definition of a Category II fishery. If the categorization criteria were ignored, and the fishery was placed in Category III, NMFS would have no mechanism except for

voluntary cooperation of Category III fishers, short of an emergency rule, to monitor the fishery interactions with humpbacks. Because the incidental serious injury or mortality of a humpback whale in a purse seine net is a "no-win" situation for all parties concerned, NMFS would like to work with the fishing industry to understand the nature of these interactions and develop means for fishers to avoid them, as well as effective responses if an interaction does occur.

*Comment 8:* Using the PBR level to classify fisheries has advantages, but it is only as accurate as the data being used. It is our understanding that the population estimate for humpbacks is 12 years old and is based on a survey done in Hawaii. How often will NMFS update its population estimates for strategic stocks?

*Response:* Stock assessment reports (SAR) for strategic stocks are required by the MMPA to be reviewed annually. Additional data for population estimates will be gathered according to the greatest need and subject to the availability of funds.

NMFS acknowledges that the population estimates for the Central North Pacific stock of humpback whales are problematic, and intends to address them in the next couple of years through new analyses of recent data and population surveys.

*Comment 9:* The Alaska Peninsula/Aleutian Island salmon drift gillnet should be classified in Category III and not in Category II as proposed. The rationale presented for a Category III categorization is that the drift gillnet fishery takes 1.8 percent of the PBR level for Dall's porpoise, although the Alaskan Dall's porpoise stock is one of the few stocks for which a determination has been made that the optimum sustainable population level is met. The PBR level is calculated to be 1,537 and the SAR indicates total estimated fishery mortality is 41 per year, well less than 10 percent of the PBR level. This, by itself, should result in a Category III classification. Further, using extrapolated data, the estimated mortality rate for the Alaska Peninsula drift gillnet fishery is 1.8 percent, just over the Tier 2 threshold of 1 percent of the PBR level for a Category II classification.

*Response:* NMFS agrees that classification of commercial fisheries should be based on reliable information. The most reliable source for this information are observer programs, which can be employed for fisheries classified in Category I or II but can only be employed for a Category III fishery if emergency regulations are in effect.

Because of this statutory limitation, NMFS is uncomfortable with classifying a fishery as Category III if data exist that suggest the marine mammal incidental take level may be above the relevant threshold. The Alaska Peninsula/Aleutian Islands salmon drift gillnet fishery, like other salmon drift gillnet fisheries in Alaska, has documented takes of a variety of marine mammal stocks (Dall's porpoise, harbor porpoise, harbor seals, northern fur seals, walrus and unidentified small cetaceans). Because of inadequate observer coverage across fisheries in Alaska, NMFS considers the current information on take levels for many stocks to be underestimates. Dall's porpoise serious injury and mortality is documented in the logbooks from six fisheries. Based on those levels, NMFS believes that if more accurate observer information were available, the level of Dall's porpoise takes would exceed the 10 percent threshold across all fisheries. In that case, the Alaska Peninsula drift gillnet fishery, with its Dall's porpoise take level of 1.8 percent the PBR level, would be classified in Category II.

Additional support for placement of this fishery in Category II is based on low levels of harbor porpoise serious injuries and mortalities documented in logbook reports submitted in this fishery. Because the documented annual serious injury and mortality of harbor porpoise in Alaska is greater than the 10 percent threshold level across all fisheries, and because logbook reports represent an underestimate of the total number of serious injuries and mortalities in a fishery, the total impact to the harbor porpoise population may be above the 1 percent of PBR level that would cause this fishery to be classified as Category II.

*Comment 10:* The rationale regarding the proposed Category II classification of Alaska Peninsula set gillnet fishery is weak. It states that this fishery takes a substantial number of marine mammals. The proposed LOF does not discuss what data suggest that levels of mortality and serious injury may exceed 10 percent of each stock's PBR level if observer information were available, why it is to be expected that incidental mortality may exceed certain levels, or why this fishery would interact with similar species as do set gillnet fisheries in other areas. In this case, classification is too speculative and supports classification of the Alaska Peninsula/Aleutian Islands salmon set gillnet fishery in Category III.

*Response:* Because this fishery has documented mortalities and serious injuries to marine mammals at an unknown rate, has never been observed,