

than 1 percent and less than 50 percent of the stock's PBR level are placed in Category II. Individual fisheries in which annual mortality and serious injury is less than or equal to 1 percent of the PBR level would be placed in Category III. The threshold between Tier 1 and Tier 2 was set at 10 percent of the PBR level based on recommendations that arose from a PBR Workshop held in La Jolla, California in June 1994. The Workshop Report indicated that if the total annual incidental serious injury and mortality level for a particular stock did not exceed 10 percent of the PBR level, the amount of time necessary for that population to achieve the optimum sustainable population level would only increase by 10 percent. Thus, 10 percent of the PBR level for a particular stock was equated to "biological insignificance." This approach ensures that fisheries are categorized based on their impacts on stocks and allows NMFS to focus resources on those fisheries that have more than a negligible impact on marine mammals.

Ultimately, this approach is based on the fact that the MMPA established both a short-term and a long-term goal with respect to take reduction plans for reducing marine mammal mortality and serious injury incidental to commercial fishing operations. MMPA section 118(f)(2) provides: "The immediate goal of a take reduction plan for a strategic stock shall be to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to levels less than the potential biological removal established for that stock under section 117. The long-term goal of the plan shall be to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans." NMFS established the tier-based fishery classification system with each goal in mind, and specifically, to ensure that fisheries progressively move toward the long-term goal of the MMPA.

Comment 2: One commenter requested that NMFS better describe the information used and the basis for estimating incidental mortality and serious injury of marine mammals, specifically for fisheries where the level of take is uncertain but considered significant.

Response: NMFS appreciates this comment and believes that it would be useful to provide a background document that better describes the types of information and methods used to estimate incidental mortality and serious injury of marine mammals and classify fisheries so that the public could better understand the rationale for each fishery classification. NMFS will consider the development of such a document in the future as time and resources permit. Generally, NMFS uses information on incidental mortality and serious injury provided in the annual SARs as the basis for fishery classifications. SARs contain a list of references that demonstrate the published information used and also describe how the data on incidental mortality and serious injury for a given stock were ascertained. NMFS refers the commenter to the SARs for marine mammal stocks in the U.S. Copies of the SARs are available on the NMFS Office of Protected Resource's Web site at: http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.

Comment 3: One commenter recommended that NMFS distinguish between commercial and non-commercial (e.g., recreational, subsistence, personal use) pot fisheries given that non-commercial fisheries may use practices and gear types that result in interactions with marine mammals.

Response: NMFS agrees that it is important to address all potential sources of fishery-related incidental mortality and serious injury of marine mammals. Furthermore, the agency understands that there are fisheries in which both commercial and non-commercial fisheries use the same gear and deploy it in the same manner and that both can result in incidental mortality and serious injury of marine mammals. While the MMPA does not currently provide NMFS with the authority to categorize or monitor non-commercial fisheries with respect to marine mammal interactions, NMFS is currently seeking this authority through the administration's proposal to reauthorize the MMPA. Nonetheless, where possible, NMFS has collected information on incidental mortality and serious injury of marine mammals resulting from non-commercial fisheries.

Comment 4: One commenter urged NMFS to ensure consistency in methods used from fishery to fishery to determine the true level of incidental mortality and/or serious injury of marine mammals.

Response: NMFS agrees with the commenter that applying its methods consistently in the determination of estimates of marine mammal mortality and serious injury incidental to fishing is essential. Through the workshops on Guidelines for Assessing Marine Mammal Stocks (GAMMS) held in 1994 and 1996 and the accompanying GAMMS reports, which are available on the NMFS Office of Protected Resources Web site at http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html, NMFS has developed guidelines to ensure consistency in the methods used and analysis of information to determine rates of marine mammal incidental mortality and serious injury resulting from fishing.

Comments on Fisheries in the Pacific Ocean

Comments on the Alaska Bering Sea and Aleutian Islands (BSAI) Groundfish Longline/Setline Fishery

Comment 5: One commenter stated that NMFS should reclassify the Alaska BSAI groundfish longline/setline fishery as Category II given the level of killer whale takes in the fishery.

Response: According to the 2002 SARs, the BSAI groundfish longline/setline fishery incurred an average of 0.8 incidental mortalities/serious injuries of eastern North Pacific northern resident killer whales between 1995 and 1999, or 11 percent of the stock's PBR, which qualifies the fishery as Category II. However, the PBR for this stock is an underestimate because (1) the minimum abundance estimate is based on a count of known individuals rather than an estimate of population size and (2) the abundance estimate does not include resident animals identified during research cruises in the Gulf of Alaska and Bering Sea in 2001–2002. NMFS expects that the minimum population estimate will increase as a result of the recent research. Should the minimum population estimate increase slightly, the PBR level would also increase, and the estimated mortality level incidental to this fishery would not be sufficiently high to trigger its placement in Category II. Therefore, given that the PBR level is likely an underestimate and the incidental mortality and serious injury rate is so close to the threshold between Category II and Category III, NMFS will retain this fishery in Category III at this time.