

*Comments on the Hawaii (HI) Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, and Oceanic Sharks Longline/Setline Fishery*

*Comment 6:* One commenter stated that NMFS should reclassify the Hawaii swordfish, tuna, billfish, mahi mahi, wahoo, and oceanic sharks longline/setline fishery as Category I given that takes of false killer whales in the fishery exceed the marine mammal stock's PBR level. The commenter expressed concern that sea turtle regulations that went into effect have not helped reduce marine mammal takes. The commenter also expressed concern about the results of recent abundance surveys for false killer whales.

*Response:* In 2002, NMFS conducted an abundance survey to estimate abundance for marine mammals inhabiting waters off the Hawaiian islands, including areas in which the HI swordfish, tuna, billfish, mahi mahi, wahoo, and oceanic sharks longline/setline fishery operates. NMFS is currently analyzing the results of this survey and will include this information in the Draft Stock Assessment Reports (SARs) for 2004. NMFS will use the updated SARs to re-evaluate the classification of this fishery for the 2004 LOF.

*Comments on the Alaska Crustacean Pot Fishery*

*Comment 7:* One commenter stated that NMFS should divide the Alaska crustacean pot fishery into different components based on variation in geographic area, season, depth, gear type, and interaction with humpback whales to help NMFS determine which element of the fishery is having the greatest number of interactions with humpback whales.

*Response:* The LOF currently groups all Alaska pot fisheries into the "Alaska crustacean pot fishery." However, this fishery does not exist as a single entity in terms of fishery operations or management. Rather, multiple crustacean fisheries target different species over distinct geographic areas and during separate seasons within the exclusive economic zone off Alaska and in state waters on an annual basis. These differences are recognized by NMFS, the North Pacific Fishery Management Council, and the State of Alaska, and are reflected in the numerous management specifications and restrictions captured in regulations promulgated under the Fishery Management Plan for the Bering Sea and Aleutian Islands King and Tanner Crabs and under Alaska state management plans for various crab and other

crustacean fisheries, including shrimp, in state waters.

Additionally, Alaska crustacean fisheries are known to result in incidental mortality and serious injury of marine mammals in some areas (e.g., Southeast Alaska), but not in others (e.g., the Bering Sea). For purposes of future Lists of Fisheries, all crustacean fisheries in Alaska will be reviewed for correct delineations to accurately reflect existing fishery management regimes. Based on this review, NMFS will propose adjustments to this and other Alaska fisheries and will reevaluate data on marine mammal interactions in these fisheries accordingly for the 2004 LOF.

*Comment 8:* Two commenters felt that NMFS should reclassify the Alaska crustacean pot fishery as Category I or II based on its level of interactions with humpback whales. The commenters felt the inability to determine the specific fishery that entangled humpback whales should not make it impossible to classify the fishery as Category I or II and stated that design of the fishing gear should be sufficient.

*Response:* See response to Comment 7. The inability to determine the fishery in which the entanglements occurred does not prevent NMFS from classifying fisheries. NMFS regulations at 50 CFR 229.2 provide that the Assistant Administrator will, in the absence of reliable information, determine whether the incidental serious injury or mortality is "occasional" by evaluating other factors such as fishing techniques, gear used, seasons and areas fished, and the species and distribution of marine mammals in the area.

NMFS has not reclassified this fishery at this time because, in addition to more appropriately delineating the Alaska crustacean pot fishery and looking at marine mammal incidental mortality and serious injury rates within different sectors of the fishery, the agency is currently evaluating the stock structure of Central North Pacific humpback whales. We will take this comment into consideration as we further define stock structure of Central North Pacific humpback whales as well as consider separating and reclassifying portions of the Alaska crustacean pot fishery, if appropriate, for the 2004 LOF.

*Comment 9:* One commenter noted that the Central North Pacific stock of humpback whales should be added to the list of stocks that interact with the Alaska crustacean pot fishery given that NMFS mentioned in the text of the proposed rule that it is currently evaluating interactions between this stock and the fishery.

*Response:* NMFS will add the Central North Pacific stock of humpback whales

to the list of stocks that interact with this fishery.

*Comments on the BSAI Groundfish Trawl Fishery*

*Comment 10:* NMFS received comments supporting and opposing reclassification of the BSAI groundfish trawl fishery from Category III to Category II. One commenter in favor of the reclassification stated that it is more appropriate to reclassify the fishery as Category I given uncertainty concerning the level of interactions occurring between the fishery and North Pacific humpback whales. One commenter opposed to reclassifying the fishery questioned the quality of the data on which NMFS based this decision as well as the appropriateness of double-counting humpback whales between the Western and Central North Pacific stocks. This commenter also requested that NMFS divide the fishery into smaller components given the sheer size and diversity of the fishery.

*Response:* Where there is considerable uncertainty regarding to which stock a serious injury or mortality should be assigned, NMFS exercises a conservative approach of assigning the serious injury or mortality to both stocks. Clearly, if information were available regarding the location of take, genetics of the animal taken, or other information that would conclusively link mortality to a specific stock, NMFS would use it to assign the take to a specific stock. In the meantime, the agency will review the serious injuries and mortalities incidental to this fishery to determine whether any of the takes of concern can be conclusively linked to a specific stock.

As with the Alaska crustacean pot fishery, this comment highlights the fact that a single BSAI groundfish trawl fishery, as currently listed in the annual LOF, does not exist as one homogenous fishery in terms of fishery operations or management, but rather, as a diverse group of fisheries that use different trawl gear types and target different groundfish species over distinct geographic areas and during different seasons within the Bering Sea on an annual basis. These fisheries are currently managed as separate entities. For instance, the BSAI groundfish trawl fisheries are managed by gear type (including pelagic and non-pelagic trawl gear), by target species (including pollock, Pacific cod, Atka mackerel, and various flatfish and rockfish complexes), and by geographic regions within the BSAI. These differences are recognized by NMFS and the North Pacific Fishery Management Council and are reflected in the numerous management