

specifications and restrictions captured in regulations promulgated under the Fishery Management Plan for the Bering Sea and Aleutian Islands.

Additionally, sectors within these fisheries are recognized by statute (the American Fisheries Act) and regulatory management measures endorsed by the North Pacific Fishery Management Council and implemented by NMFS. Such sectors include the head and gut sector of each of the Pacific cod and Atka mackerel trawl fisheries, and the catcher/processor and inshore processor sectors, as well as their associated catcher vessel fleets. In some cases, these sectors also comprise legally defined co-operatives. Distinct management measures for these recognized fisheries include separate harvest restrictions by time and area based on target species, non-target groundfish bycatch, and prohibited species catch, as well as time and area closures based on marine mammal management measures. These distinct fisheries are further recognized in several Biological Opinions promulgated under Section 7 of the Endangered Species Act and in Environmental Impact Statements on the fisheries promulgated under the National Environmental Policy Act.

There is a likelihood that the incidental mortality and serious injury of marine mammals varies among BSAI groundfish trawl fisheries, based on gear type, time and area of operations, and target groundfish species. For this and all the above reasons, NMFS will not reclassify the fishery designated as the "BSAI groundfish trawl fishery" as Category II in the 2003 LOF. Rather, NMFS will propose fishery delineations within this fishery that accurately reflect the existing fishery management regimes for the BSAI groundfish trawl fisheries, and will analyze rates of marine mammal incidental mortality and serious injury within these new delineations accordingly, for the 2004 LOF.

A one year delay in this process will not adversely affect NMFS' ability to monitor marine mammal interactions with this fishery, because, although currently in Category III, these fisheries already carry a minimum of 30 percent observer coverage for vessels 60 ft. (18.3 m.) length overall (LOA) and over, and a vast majority of the participating vessels maintain 100–200 percent observer coverage by regulation for purposes of fisheries management.

Additionally, there are other Federal and state fisheries listed in the LOF that warrant similar review for similar reasons. Therefore, for purposes of the List of Fisheries, all Federal and state

fisheries in Alaska will be reviewed for correct delineations to accurately reflect the existing fishery management regimes for the 2004 LOF.

Comment 11: One commenter stated that NMFS should reassess its methods to monitor the Alaska BSAI groundfish trawl fishery to ensure that observer coverage is appropriately distributed to monitor humpback whale takes.

Response: NMFS believes that the level and distribution of observer coverage in the BSAI groundfish trawl fishery is sufficient to monitor marine mammal interactions, including those involving humpback whales, and to identify issues of concern. Currently, there is a requirement for 100-percent observer coverage of vessels in this fishery that exceed 124 ft. (37.8 m.) LOA. In some cases, pursuant to the American Fisheries Act and Community Development Quota programs, 200-percent observer coverage is required on vessels that exceed this length. For vessels between 124 ft. (37.8 m.) and 60 ft. (18.3 m.) LOA, 30 percent observer coverage is required. Observers are not required on catcher vessels that deliver codends to catcher processors or motherships or on vessels less than 60 ft. (18.3 m.) LOA.

NMFS' Alaska Regional office is currently working with the North Pacific Fishery Management Council to review the issue of appropriate observer coverage in federal groundfish fisheries, as well as halibut fisheries. All vessel categories in these fisheries, including those not currently required to carry observers, will be reviewed over the next several years to assess appropriate observer coverage levels for a suite of management and scientific needs.

Comment 12: One commenter requested that NMFS clarify whether harbor seals or harbor porpoises should be removed from the list of species incidentally killed/seriously injured in the BSAI groundfish trawl fishery.

Response: NMFS clarifies that in the proposed rule for the 2003 List of Fisheries the agency proposed to remove Gulf of Alaska (GOA) harbor seals from the list of species interacting with the BSAI groundfish trawl fishery. Reevaluation of existing data on incidental mortality and serious injury, together with information on the BSAI groundfish trawl fishery, confirms that the range of the GOA harbor seal stock overlaps with the BSAI groundfish trawl fishery. Therefore, NMFS will retain this stock on the list of species interacting with the BSAI groundfish trawl fishery. The proposed deletion of the GOA harbor seal in this case was in error.

Comments on Alaska Cook Inlet Salmon Drift and Set Gillnet Fisheries

Comment 13: Some commenters stated that reclassifying the Alaska Cook Inlet salmon drift and set gillnet fisheries as Category III is premature given that a decrease in observed interactions is likely due to declining numbers of Cook Inlet beluga and that reclassification should be based on estimated takes, not observed takes. Commenters recommended the fisheries be kept in Category II with continued observer coverage.

Response: NMFS has determined that classification of the Alaska Cook Inlet salmon set gillnet fishery as a Category III fishery is appropriate based on the lack of any observed serious injuries or mortalities of marine mammals in that fishery after two consecutive years of observer coverage that occurred from 1999–2000. In contrast, analysis completed since the proposed rule was published indicates that one mortality of harbor porpoise in the Cook Inlet salmon drift gillnet fishery in 2000 extrapolates to a mortality estimate of 27 animals in 2000, or an average of 13.5 per year for 1999 and 2000. This level of incidental mortality and serious injury is adequate to retain the Cook Inlet salmon drift gillnet fishery in Category II. Therefore, NMFS will retain this fishery as Category II.

NMFS agrees that when classifying a fishery based on observer data, observed serious injuries and mortalities should be extrapolated to estimate the total level of incidental serious injury and mortality in that fishery. Observed levels of incidental mortality and serious injury were used previously only because the analysis for extrapolation had not yet been completed. The observed levels of serious injury and mortality indicated a Category II classification was appropriate, and the extrapolated estimate still supports this.

Comment 14: One commenter requested that NMFS clarify what it was proposing with respect to the AK Cook Inlet salmon drift gillnet fishery.

Response: NMFS clarifies that it initially proposed to reclassify the AK Cook Inlet salmon drift gillnet fishery as Category III. Upon further analysis of 2000 data, NMFS will retain this fishery as Category II in the 2003 LOF (see response to Comment 13 above).

Comments on the California (CA) Yellowtail, Barracuda, White Seabass, and Tuna Drift Gillnet Fishery

Comment 15: One commenter expressed support for the addition of the CA yellowtail, barracuda, white