

MMPA Background Information

Definitions

Take:

- *Statute:* To harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. (16 U.S.C. 1362)
- *Regulation:* to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild. (50 CFR 216.2)
- Exceptions to the take prohibition
 - Incidental take
 - Commercial fishing
 - Non-fishing commercial activities (e.g., oil and gas)
 - Direct take
 - Subsistence hunting/handicrafts by Alaska natives
 - Scientific research, public display, and photography
 - Non-lethal deterrence
 - Pinniped removal authority

Optimum sustainable population

- *Statute:* The number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element. (16 U.S.C. 1362)
- *Regulation:* A population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality. (50 CFR 216.3)

Serious injury

- *Regulation:* Any injury that will likely result in mortality. (50 CFR 216.3)
- *Policy:* Any injury that is more likely than not to result in mortality, or any injury that presents a greater than 50% change of death to the animal. (NMFS Policy Directive PD 02-038)

Insignificant levels approach a zero mortality and serious injury rate (also known as zero mortality rate goal, or ZMRG)

- *Regulation:* Insignificance threshold means the upper limit of annual incidental mortality and serious injury of marine mammal stocks by commercial fisheries that can be considered insignificant levels approaching a zero mortality and serious injury rate. An insignificance threshold is estimated as 10 percent of the Potential Biological Removal

level for a stock of marine mammals. If certain parameters (e.g., maximum net productivity rate or the recovery factor in the calculation of the stock's potential biological removal level) can be estimated or otherwise modified from default values, the Assistant Administrator may use a modification of the number calculated from the simple formula for the insignificance threshold. The Assistant Administrator may also use a modification of the simple formula when information is insufficient to estimate the level of mortality and serious injury that would have an insignificant effect on the affected population stock and provide a rationale for using the modification. (50 CFR 229.2)

Potential biological removal (PBR)

- *Statute and regulation:* The maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:
 - The minimum population estimate of the stock.
 - One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size.
 - A recovery factor of between 0.1 and 1.0. (16 U.S.C. 1362 and 50 CFR 229.2)
- More guidance in the Guidelines for Assessing Marine Mammal Stocks (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/guidelines-assessing-marine-mammal-stocks>)

Strategic

- *Statute and regulation:* A marine mammal stock—
 - for which the level of direct human-caused mortality exceeds the potential biological removal level;
 - which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future;
 - which is listed as a threatened species or endangered species under the Endangered Species Act of 1973; or
 - is designated as depleted under the Marine Mammal Protection Act of 1972, as amended. (16 U.S.C. 1362 and 50 CFR 229.2)

Depleted

- *Statute:* Any case in which—
 - the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under subchapter III of this chapter, determines that a species or population stock is below its optimum sustainable population;
 - a State, to which authority for the conservation and management of a species or population stock is transferred under section 1379 of this title, determines that such species or stock is below its optimum sustainable population; or
 - a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973. (16 U.S.C. 1362)

MMPA Commercial Fishery Classifications

Category I

- *Statute:* Frequent incidental mortality and serious injury of marine mammals. (16 U.S.C. 1387)
- *Regulation:* A commercial fishery determined by the Assistant Administrator to have frequent incidental mortality and serious injury of marine mammals. A commercial fishery that frequently causes mortality or serious injury of marine mammals is one that is by itself responsible for the annual removal of 50 percent or more of any stock's potential biological removal level. (50 CFR 229.2)

Category II

- *Statute:* Occasional incidental mortality and serious injury of marine mammals. (16 U.S.C. 1387)
- *Regulation:* A commercial fishery determined by the Assistant Administrator to have occasional incidental mortality and serious injury of marine mammals. A commercial fishery that occasionally causes mortality or serious injury of marine mammals is one that, collectively with other fisheries, is responsible for the annual removal of more than 10 percent of any marine mammal stock's potential biological removal level and that is by itself responsible for the annual removal of between 1 and 50 percent, exclusive, of any stock's potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is "occasional" by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator. Eligible commercial fisheries not specifically identified in the list of fisheries are deemed to be Category II fisheries until the next list of fisheries is published. (50 CFR 229.2)

Category III

- *Statute:* A remote likelihood of or no known incidental mortality and serious injury of marine mammals. (16 U.S.C. 1387)
- *Regulation:* A commercial fishery determined by the Assistant Administrator to have a remote likelihood of, or no known incidental mortality and serious injury of marine mammals. A commercial fishery that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that collectively with other fisheries is responsible for the annual removal of:
 - Ten percent or less of any marine mammal stock's potential biological removal level, or
 - More than 10 percent of any marine mammal stock's potential biological removal level, yet that fishery by itself is responsible for the annual removal of 1 percent or less of that stock's potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is "remote" by

evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area or at the discretion of the Assistant Administrator.
(50 CFR 229.2)