

**PART 3035—RESEARCH AND DEVELOPMENT CONTRACTING**

**3035.003 [Amended]**

■ 23. Amend § 3035.003(b) in the last sentence by removing “OEs” and adding “Components” in its place.

**3035.017 [Amended]**

■ 24. Amend § 3035.017(a) in the last sentence by removing “OEs” and adding “Components” in its place.

**PART 3042—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

**3042.1502 [Amended]**

■ 25. Amend § 3042.1502(a) by removing “OEs” and adding “Components” in its place.

**PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**3052.101 [Amended]**

■ 26. Amend § 3052.101 as follows:  
 ■ a. In paragraph (b)(2)(i)(A), in the second sentence, by removing “OEs” and adding “Components” in its place.  
 ■ b. In paragraph (b)(2)(i)(B), in the first sentence, by removing “OE” and adding “Component” in its place.

**3052.204–70 [Amended]**

■ 27. Amend § 3052.204–70(d) in the last sentence by removing “Organizational elements” and adding “Components” in its place.

**3052.204–71 [Amended]**

■ 28. Amend § 3052.204–71, ALTERNATE I as follows:  
 ■ a. In paragraph (i) in the first sentence by removing “OE” and adding “Component” in its place.  
 ■ b. In paragraph (k) in the first sentence by removing “Organizational Element” and adding “Component” in its place.

**PART 3053—FORMS**

**3053.101 [Amended]**

■ 29. Amend § 3053.101 by removing “OEs” and adding “Components” in its place.

[FR Doc. 06–7035 Filed 8–21–06; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**Migratory Bird Hunting**

*CFR Correction*

In Title 50 of the Code of Federal Regulations, parts 18 to 199, revised as of October 1, 2005, on page 36, § 20.21 is corrected by reinstating paragraphs (j)(2) and (3) to read as follows:

**§ 20.21 What hunting methods are illegal?**

- \* \* \* \* \*
- (j) \* \* \*
- (2) Each approved shot type must contain less than 1 percent residual lead (see § 20.134).
- (3) This shot type restriction applies to the taking of ducks, geese (including brant), swans, coots (*Fulica americana*), and any other species that make up aggregate bag limits with these migratory game birds during concurrent seasons in areas described in § 20.108 as nontoxic shot zones.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 229**

[Docket No. 060330090–6212–02, I.D. 021506B]

RIN 0648–AU19

**List of Fisheries for 2006**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) is publishing its final List of Fisheries (LOF) for 2006, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2006 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as

registration, observer coverage, and take reduction plan requirements.

**DATES:** This final rule is effective September 21, 2006.

The California sardine purse seine fishery, the Chesapeake Bay inshore gillnet fishery, and the Mid-Atlantic menhaden purse seine fishery are considered to be Category II fisheries on September 21, 2006, and are required to comply with all requirements of Category II fisheries (i.e., complying with applicable registration requirements, complying with applicable take reduction plan requirements, and carrying observers, if requested) on that date.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for a listing of all Regional offices.

For collection-of-information requirements subject to the Paperwork Reduction Act, please contact the Office of Management and Budget, Attn: David Rostker, fax: 202–395–7285 or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Melissa Andersen, Office of Protected Resources, 301–713–2322; David Gouveia, Northeast Region, 978–281–9328; Vicki Cornish, Southeast Region, 727–824–5312; Christina Fahy, Southwest Region, 562–980–4023; Brent Norberg, Northwest Region, 206–526–6733; Bridget Mansfield, Alaska Region, 907–586–7642; Lisa Van Atta, Pacific Islands Region, 808–973–2937. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Availability of Published Materials**

Information regarding the LOF and the Marine Mammal Authorization Program, including registration procedures and forms, current and past LOFs, observer requirements, and marine mammal injury/mortality reporting forms and submittal procedures, may be obtained at: <http://www.nmfs.noaa.gov/pr/interactions/mmap>, or from any NMFS Regional Office at the addresses listed below.

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Marcia Hobbs;  
 NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Teletha Mincey;  
 NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Lyle Enriquez;

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802; or

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI, 96814-4700.

### What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Stock Assessment Reports and other relevant sources and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387(c)(1)(c)).

### How Does NMFS Determine in which Category a Fishery is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

#### *Fishery Classification Criteria*

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as 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. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

*Tier 1:* If the total annual mortality and serious injury of a marine mammal

stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III (unless those fisheries interact with other stock(s) in which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

*Tier 2, Category I:* Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level.

*Tier 2, Category II:* Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

*Tier 2, Category III:* Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Since fisheries are categorized on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically categorized on the LOF at its highest level of classification (e.g., a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II).

#### *Other Criteria That May Be Considered*

In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality qualifies for Category II 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 for Fisheries (50 CFR 229.2).

### How Do I Find Out if a Specific Fishery is in Category I, II, or III?

This final rule includes two tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the

fisheries in the Pacific Ocean (including Alaska). Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

### Am I Required to Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization from NMFS in order to lawfully incidentally take a marine mammal in a commercial fishery. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

### How Do I Register?

Vessel or gear owners must register with the Marine Mammal Authorization Program (MMAP) by contacting the relevant NMFS Regional Office (see **ADDRESSES**) unless they participate in a fishery that has an integrated registration program (described below). Upon receipt of a completed registration, NMFS will issue vessel or gear owners an authorization certificate. The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)).

### What is the Process for Registering in an Integrated Fishery?

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems. Participants in these fisheries are automatically registered under the MMPA and are not required to submit registration or renewal materials or pay the \$25 registration fee. The following section indicates which fisheries are integrated fisheries and has a summary of the integration process for each Region. Vessel or gear owners who operate in an integrated fishery and have not received an authorization certificate by January 1 of each new year must contact their NMFS Regional Office (see **ADDRESSES**). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries. Individuals

fishing in Category I and II fisheries for which no state or Federal permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

#### **Which Fisheries Have Integrated Registration Programs?**

The following fisheries have integrated registration programs under the MMPA:

1. All Alaska Category II fisheries;
2. All Washington and Oregon Category II fisheries;
3. Northeast Regional fisheries for which a state or Federal permit is required;
4. All Southeast Regional fisheries for which a Federal permit is required, as well as fisheries permitted by the states of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas; and
5. The Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set line Fishery.

#### **How Do I Renew My Registration Under the MMPA?**

Vessel or gear owners that participate in fisheries that have integrated registration programs (described above) are automatically renewed and should receive an authorization certificate by January 1 of each new year. Vessel or gear owners who participate in an integrated fishery and have not received authorization certificates by January 1 must contact the appropriate NMFS Regional Office (see **ADDRESSES**). Vessel or gear owners that participate in fisheries that do not have integrated registration programs and that have previously registered in a Category I or II fishery will receive a renewal packet from the appropriate NMFS Regional Office at least 30 days prior to January 1 of each new year. It is the responsibility of the vessel or gear owner in these fisheries to complete their renewal form and return it to the appropriate NMFS Regional Office at least 30 days in advance of fishing. Individuals who have not received a renewal packet by January 1 or are registering for the first time must request a registration form from the appropriate Regional Office (see **ADDRESSES**).

#### **Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?**

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a Category I,

II, or III fishery must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. Injury/mortality report forms and instructions for submitting forms to NMFS can be downloaded from: [http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap\\_reporting\\_form.pdf](http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf). Reporting requirements and procedures can be found in 50 CFR 229.6.

#### **Am I Required to Take an Observer Aboard My Vessel?**

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

#### **Am I Required to Comply With Any Take Reduction Plan Regulations?**

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans. Take reduction plan requirements can be found at 50 CFR 229.30–34.

#### **Sources of Information Reviewed for the Proposed 2006 LOF**

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the Stock Assessment Reports (SARs) for all observed fisheries to determine whether changes in fishery classification were warranted. NMFS' SARs are based on the best scientific information available at the time of preparation, including the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional scientific review groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that may not be included in the SARs.

The LOF for 2006 was based, among other things, on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), the final SARs for 2002 (68 FR 17920, April 14, 2003), the final SARs for 2003 (69 FR 54262, September 8, 2004), the final SARs for 2004 (70 FR 35397, June 20, 2005), and the final SARs for 2005 (71 FR 26340, May 4, 2006). All SARs are available at: <http://www.nmfs.noaa.gov/pr/sars/>.

#### **Comments and Responses**

NMFS received 5 comment letters on the proposed 2006 LOF (71 FR 20941, April 24, 2006) from environmental, commercial fishing, and Federal and state interests. Comments on issues outside the scope of the LOF are noted, but are not responded to in this final rule.

#### *General Comments*

*Comment 1:* One commenter commended NMFS on the addition of detailed descriptions of the basis of classification decisions for each fishery on the 2006 LOF.

*Response:* In this final rule, NMFS provides additional information on the basis for classification of each fishery as Category I or II. The 2006 LOF identifies which stock(s) is responsible for a fishery's Category I classification, and indicates whether a fishery is classified as Category II based on serious injury or mortality of a marine mammal stock(s) or classified by analogy with another fishery (based on the definition of a "Category II fishery" in 50 CFR 229.2).

*Comment 2:* One commenter stated that in cases where the distribution of a marine mammal species overlaps with fisheries using gear types known to interact with that species, the fishery should be categorized with the presumption that a likelihood of interactions exists. Also, the commenter stated it is inappropriate to assume that interactions do not occur based only on fisher self-reporting.

*Response:* NMFS considers many factors in classifying fisheries, as directed by the implementing regulations for section 118 of the MMPA (50 CFR 229.2). In the absence of reliable information indicating the frequency of mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator determines 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 (50 CFR 229.2).

*Comment 3:* One commenter stated that a species should not be deleted from the list of species incidentally killed or injured for a particular fishery based on a lack of evidence of interactions within the last 5 years, as the risk of interactions continues to exist.

*Response:* The LOF is intended to inform the public of the current status of commercial fisheries with respect to marine mammal serious injuries and mortalities. It was never intended that the LOF serve as a comprehensive document detailing the history of a fishery in terms of marine mammal interactions. NMFS recognizes that fisheries change over time and species/stocks should not remain on the list of species/stocks killed/injured in a certain fishery if there are no longer data to support inclusion. If observer information for interactions over the past 5 years is insufficient, NMFS uses the best available information (including stranding reports and fisher self-reports) to determine when to delete species/stocks from the list of species or stocks incidentally killed/injured. Historical information on a fishery's interactions with a marine mammal stock is presented in the SARs. Therefore, this information should not be duplicated in the LOF.

*Comment 4:* One commenter reiterated a previous recommendation on the 2005 LOF, in which the commenter requested that NMFS describe the level of observer coverage for each fishery listed on the LOF. The commenter stated that without this information the reader cannot discern whether "no interactions were documented" means that no interactions actually occurred or observer coverage was inadequate to determine interaction levels. Also, such a description would allow readers to evaluate classifications based on "analogy". The comment used as an example the classification of the CA sardine purse seine fishery due to its similarity to the CA anchovy, mackerel, tuna purse seine fishery.

*Response:* Section 118(c) of the MMPA requires that NMFS include an explanation of changes to the LOF, the approximate number of vessels or persons actively involved in a fishery, and the marine mammal stocks interacting with a fishery in a particular LOF. The best available information on the level of observer coverage for each fishery and the spatial and temporal distribution of marine mammal

interactions observed is presented in the SARs. NMFS refers readers to the SARs for the most current information on the level of observer coverage for each fishery. Copies of the SARs are available on the NMFS Office of Protected Resource's Web site at: <http://www.nmfs.noaa.gov/pr/sars/>. Additional information on observer coverage in commercial fisheries can be found on the National Observer Program's Web site: <http://www.st.nmfs.gov/st4/nop/>.

NMFS has not included detailed information on the level, or percentage, of observer coverage in the LOF because it is generally of limited use without also including information on the confidence associated with mortality/serious injury estimates generated from observer data. Information regarding the Coefficient of Variation (CV) for stock-specific mortality/serious injury estimates are instead reported in the SARs.

The example used in the comment is noteworthy because the "analogy" upon which classification of the CA sardine purse seine fishery was based does not require observer data as its basis. This fishery is similar in many characteristics to other purse seine fisheries in the general area, and these other fisheries are in Category II (based upon the best available information from observer data from 1990–1992). Category II is the default classification for new fisheries on the LOF when there is little or no information upon which to base classification; a Category II classification requires participants to register and carry observers if requested, so that baseline information regarding incidental mortality and serious injury levels in the fishery can be determined. Thus, Category II has been identified as the appropriate classification for those fisheries with insufficient or unreliable data to support classification.

General information on observer coverage in the LOF could be useful for the public. For that reason, NMFS will consider adding relevant information to future LOFs on recently observed fisheries, or fisheries the agency intends to observe in the near term, in such a way as to avoid misinterpretation of the information.

*Comment 5:* One commenter recommended NMFS review all cases where serious injury or mortality occurred, but where the involved fishery, the affected stock, or both, was unknown, to determine if potential misallocation of take could result in misclassification of the relevant fisheries. If misclassifications are possible, NMFS should develop alternatives for classifications that

ensure the potential risks to marine mammals are evaluated in a precautionary manner.

*Response:* If a misclassification were to occur, it is more likely to err on the conservative side as to minimize potential risks to marine mammals. For example, evidence of a possible fishery take through records of stranded animals would alert NMFS to potential problems with fisheries in the area. NMFS would then evaluate spatial and temporal cues to discern overlap between stranding reports and fishing activity, as well as net or gear marks or any other evidence that might indicate fishery interaction. NMFS would use this information in determining which fisheries might be involved. Most often, NMFS has enough indication from fisheries in the area to gauge potential for certain gear to be a risk to marine mammals, and uses this information to classify fisheries by analogy to other fisheries with similar gear in Category II. NMFS may also place observers in these fisheries to gather data on fisheries for which there is not yet sufficient information to determine the level of serious injury and mortality in a given fishery and/or which stocks interact with the fishery. NMFS continues to collect additional information on marine mammal stock structure and distribution and potential fishery interactions, through research on stranded and free-swimming marine mammals to identify the potential fishery involved and improvements to observer programs.

*Comment 6:* One commenter supported observer coverage as the best way to monitor interactions between fisheries and marine mammals.

*Response:* NMFS will continue to observe Category I and II fisheries for monitoring marine mammal interactions. However, NMFS notes that self-reporting of injuries and mortalities of marine mammals by fishers is required by the MMPA. For this purpose, NMFS developed the MMAP Mortality/Injury Report Form, which is available at: [http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap\\_reporting\\_form.pdf](http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf).

*Comment 7:* One commenter urged NMFS to prioritize resources for observer coverage and ensure that resources are allocated to observe fisheries that have the most interactions with marine mammals and interactions with the most imperiled species.

*Response:* As required by section 118(d)(4) of the MMPA, the highest priority for allocating observers among fisheries would be for those commercial fisheries that have incidental mortality or serious injury of marine mammals

from stocks listed as endangered or threatened under the Endangered Species Act (ESA). To the extent practicable, the next highest priority for allocation would be for those Category I and Category II commercial fisheries that have incidental mortality and serious injury of marine mammals from strategic stocks. NMFS also places observers in fisheries where a take reduction plan (TRP) is in place to monitor incidental interactions to assess progress toward reducing interactions, to monitor compliance with the TRP, and to provide information useful to further reduce serious injury and mortality. NMFS also has observer coverage in fisheries for other fishery management purposes. In these cases, the information gathered may also be helpful in determining mortality and serious injury levels for fisheries that would otherwise not be a high priority for observer coverage under the MMPA (e.g., the American Samoa longline fishery).

NMFS will continue to allocate its limited resources for observer coverage to meet MMPA requirements according to these priorities. NMFS will also try to make the best use of available resources by using existing research programs, programs operated by states or other authorities, or alternative programs where statistically reliable information can be obtained.

In addition, NMFS has begun work on a National Bycatch Report that will provide a comprehensive summary of regional and national bycatch estimates in United States commercial fisheries based on observer data and fisher reports. The first edition of this report will discuss impacts and bycatch for fish, marine mammals, sea turtles, and sea birds in a subset of selected U.S. commercial fisheries where data and estimation procedures are available to support the development of bycatch estimates. NMFS plans to release the first edition in 2008. Subsequent editions will expand upon the number of fisheries included.

#### *Comments on Fisheries in the Pacific Ocean*

*Comment 8:* The list of marine mammals that interact with fisheries in Alaska includes threatened and endangered species. One commenter believes NMFS should convene a Take Reduction Team consisting of the Alaska Bering Sea/ Aleutian Islands (BSAI) flatfish trawl, BSAI pollock trawl, BSAI Greenland turbot longline, BSAI Pacific cod longline, and Bering Sea sablefish pot fishery to examine the impacts of commercial fisheries on marine mammals, including direct

bycatch as well as other impacts such as those to predator-prey relationships.

*Response:* Section 118(f) of the MMPA contains provisions for convening a Take Reduction Team, based on the need for developing and implementing a Take Reduction Plan (TRP) for individual strategic marine mammal stocks according to levels of serious injury and mortality to that stock as a direct result of incidental take. Ideally, a TRP for each strategic stock that interacts with a Category I or II fishery would be developed; however, when resources are limited, the MMPA provides a set of priorities in determining the need for convening such teams. NMFS resources for developing TRPs are allocated according to these priorities. The highest priorities specified in the MMPA are for species or stocks where PBR is exceeded, those with small population sizes, and those which are declining most rapidly. In the Alaska Region, there are no Category I fisheries and none of the strategic stocks that interact with Category II fisheries meet these highest priorities. Therefore, NMFS does not have plans at this time to develop a TRP for any marine mammal stocks in Alaska.

*Comment 9:* One commenter noted that most gillnet fisheries in Alaska have little or no observer coverage, and reliance on fishers to report serious injury and mortality in those fisheries is likely to result in underestimates of serious injury and mortality. Of particular concern are humpbacks, which are known to occur in areas in which these fisheries operate. Anecdotal and documented reports of whales being caught in gillnets occur. Additionally, a humpback entangled in Alaska fishing gear has been documented in Hawaii. These reports, together with the gear's risk of incidentally taking marine mammals being analogous to East coast fisheries, should cause NMFS to elevate gillnets and purse seine fisheries to higher categories to enable observer coverage in those fisheries and more properly evaluate their risk to a variety of cetaceans, including some endangered species.

*Response:* With the implementation of Section 118 of the 1994 Amendments to the MMPA (60 FR 45086, August 30, 1995), all U.S. commercial fisheries were evaluated and re-categorized under the revised two-tier scheme currently used for fishery categorization for the annual LOF. At that time, very little information was available on marine mammal-fishery interactions for most of the nearshore fisheries in Alaska, including gillnet and purse seine fisheries. Reports by fishermen indicated some level of interaction.

However, NMFS considers this type of information to provide only a minimum estimate of interactions, and therefore considers it a less reliable indicator of the level of interaction than observer data. Due to the scarcity of reliable information, the Alaska set and drift gillnet fisheries were placed in Category II, based on analogy to gillnets in other regions of the U.S. known to incidentally entangle marine mammals, particularly cetaceans. The rationale in placing those fisheries in Category II was to preserve the ability to place observers in the fisheries to obtain more reliable estimates of the level of marine mammal serious injury and mortality, because NMFS may only place observers in Category III fisheries in voluntary programs or under compelling circumstances.

The NMFS/Alaska Regional Office's Marine Mammal Observer Program (AMMOP) places observers in each of the Category II nearshore, state-managed salmon fisheries for two-year periods. Due to limited resources, only one or two fisheries can be observed at any given time. Once a fishery is observed, data are analyzed to evaluate the serious injury and mortality levels and potential risk to marine mammals and appropriately classify the fishery on the LOF. That fishery will not be observed again until all the remaining unobserved Category II fisheries have been observed.

Since 1995, three Category II gillnet fisheries have been observed: the Cook Inlet set gillnet (1999–2000), Cook Inlet drift gillnet (1999–2000), and Kodiak set gillnet (2002, 2005) fisheries. Observer data collected in those fisheries have resulted in the retention of the Kodiak set gillnet and the Cook Inlet drift gillnet fisheries in Category II, and the re-categorization of the Cook Inlet set gillnet fishery to Category III. The Yakutat set gillnet fishery will be observed in 2007–2008.

The Alaska Regional Office maintains a record of marine mammals, including humpbacks, reported or observed entangled in fishing gear. This information is useful in monitoring the level of marine mammal-fishery interactions, but is not as statistically reliable as observer data. None of the currently available information indicates that reclassifying any of the Category II gillnet fisheries to Category I is warranted. The existing Category II fisheries are already eligible for observer coverage, and NMFS intends to place observer coverage in those fisheries as resources become available.

*Comment 10:* One commenter recommended NMFS undertake a more complete investigation of interactions with marine mammals in the Western

Pacific squid jig fishery and reclassify the fishery if warranted.

*Response:* There are no documented marine mammal serious injuries or mortalities incidental to the Western Pacific squid jig fishery, and the fishery currently has only 6 participants. NMFS will continue to consider information about this fishery's potential to interact with marine mammals, as available. Per the MMPA, NMFS will consider reclassification options for this fishery as future information warrants. Further justification for this fishery's classification as Category III is presented in the proposed rule for the 2006 LOF (71 FR 20941, April 24, 2006).

*Comment 11:* Two commenters supported the addition of the American Samoa longline fishery. However, both commenters suggested that the fishery be classified as Category II, instead of Category III, in order to ensure that sufficient funds and incentives exist to initiate an observer program to gather information on the level of interactions with marine mammals.

*Response:* Although this fishery is classified as Category III, an observer program for this fishery was initiated in April 2006 under the Magnuson-Stevens Fishery Conservation and Management Act. For more information, see 50 CFR part 665, which requires vessels participating in this fishery that are greater than 40 ft (12.2 m) in length to carry observers, if requested by NMFS. These regulations also establish a limited entry system for pelagic longline vessels fishing in waters of the U.S. exclusive economic zone (EEZ) around American Samoa. Observers have already completed several trips and, to date, there have been no observed marine mammal serious injuries or mortalities incidental to this fishery. NMFS anticipates that observer coverage will reach 20 percent of the qualifying vessels (i.e., those greater than 40 ft (12.2 m) in length) by January 2007. NMFS will reevaluate this fishery's classification as new information, including that gathered by the observer program, becomes available.

*Comment 12:* NMFS proposes to add three new Category III aquaculture fisheries in the Pacific Ocean. Two commenters suggested NMFS monitor aquaculture fisheries operations to characterize the rate and impact of interactions with marine mammals. Specifically, one commenter indicated a need for on-site observers for net pen fisheries due to past deliberate killings of marine mammals by net pen fishery operators, and for grow out pens due to the potential entanglement risks to cetaceans.

*Response:* NMFS plans to further evaluate aquaculture facilities operating in coastal and offshore areas, especially off California, to characterize the fisheries, including potential or known interactions with marine mammals. Based on the characterization of grow out pen fisheries, grow out pens occurring in deep water may pose a risk to cetaceans. Possible monitoring approaches for aquaculture fisheries include volunteer or mandatory reporting requirements by facilities to NMFS or the relevant state fishery management agency. NMFS will continue to investigate intentional killings of marine mammals in commercial fishery operations, as prohibited in implementing regulations for section 118 of the MMPA (50 CFR 229.3(f)).

#### *Comments on Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean*

*Comment 13:* Four commenters supported the proposed reclassification of the Chesapeake Bay inshore gillnet fishery and the Mid-Atlantic menhaden purse seine fishery.

*Response:* Reclassification of the Chesapeake Bay inshore gillnet fishery and the Mid-Atlantic menhaden purse seine fishery from Category III to Category II is warranted, based on information presented in the 2006 proposed LOF.

*Comment 14:* One commenter stated that the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery came under limited access in 1999 and overall effort has diminished since 1996. The commenter suggested NMFS revise the estimated number of active participants in the to 94, the number of actively fishing vessels reported in 2005.

*Response:* NMFS has updated the number of participants in the fishery to 94.

*Comment 15:* One commenter commended NMFS for recognizing interactions in the Atlantic Ocean, Caribbean, Gulf of Mexico commercial passenger fishing vessel fishery and recommended NMFS begin an observer program in this fishing sector, as there are likely additional species of marine mammals incidentally killed or injured than those listed in the LOF.

*Response:* NMFS has initiated an at-sea data collection program aboard a limited number of commercial passenger fishing vessels as a pilot program. The results of this program will help NMFS to better determine the appropriate sampling design and resources required for increased coverage of this fishery.

*Comment 16:* One commenter suggested that NMFS subdivide the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery into three regional fisheries in the LOF to reflect variations in geographic region, target species, vessel size, area-specific regulations, and fishing season. The commenter noted specifically that the Atlantic portion of the longline fishery should be divided into northern and southern components with a boundary line at the Florida/Georgia boundary. This division would be consistent with classifications of other fisheries in Alaska, the Pacific, and the Atlantic.

*Response:* NMFS acknowledges the information provided by the commenter on potential subdivisions of this fishery and notes that we addressed similar comments in the final LOF for 1996 (see Comment/Response 31 in 60 FR 249, December 28, 1995), the final LOF for 1997 (see Comment/Response 37 in 62 FR 33, January 2, 1997), the final LOF for 1999 (see Comment/Response 18 in 64 FR 9067, February 24, 1999), the final LOF for 2001 (see Comment/Response 16 in 66 FR 42784, August 15, 2001), and the final LOF for 2003 (see Comment/Response 29 in 68 FR 41732, July 15, 2003).

NMFS generally characterizes fisheries on the LOF consistent with the current management structure for the fishery. NMFS will, whenever possible, define fisheries the way they are defined in Federal, regional, or state fishery management programs. The pelagic longline fishery is managed by NMFS as one fishery encompassing all longline fishing effort targeting highly migratory species that may occur throughout the Atlantic Ocean, Caribbean, and Gulf of Mexico. The development of management measures to reduce serious injuries and mortalities of marine mammals in the longline fishery has focused primarily on those areas where interactions pose particular risk to marine mammals, without unduly affecting fishery operations in other areas.

*Comment 17:* One commenter recommended deleting the Western North Atlantic (WNA) stock of Atlantic spotted dolphins and the WNA stock of Pantropical spotted dolphins from the list of stocks that interact with the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery. The draft 2005 SARs state no mortalities or serious injuries have been documented in this fishery, and incidental takes have not been documented by observers.

*Response:* The species list for this fishery should include only those

species that have been documented as injured or killed in the fishery for the period 1999–2003. NMFS will review observer data, bycatch reports, and other relevant data sources for this fishery and propose any warranted changes to the list of species incidentally injured/killed in the proposed LOF for 2007.

*Comment 18:* One commenter stated that NMFS uses speculative data to assign mortality, and the SARs use an unproven “pooling” method based on data from 1999–2003 to extrapolate estimated annual interactions in 2006 in the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery. NMFS further applies a percentage to all extrapolated estimates based on observer comments, leading to a distortion of impacts and over-estimates of incidental take based on random and rare events.

*Response:* NMFS uses observer data to assign marine mammal mortality and serious injury to this fishery. The analytical methods used to extrapolate observed serious injuries and mortalities to annual estimates of mortality and serious injury are widely accepted and have been peer reviewed. The 2005 SAR uses 1999–2003 observer data because it is consistent with the NMFS guidelines for preparing marine mammal stock assessments. These guidelines are available at: <http://www.nmfs.noaa.gov/pr/pdfs/sars/gamms2005.pdf>.

*Comment 19:* One commenter disagreed with NMFS’ proposal to remove the WNA stock of fin whales from the list of species killed/injured in the Mid-Atlantic gillnet fishery. A lack of documented observations should not be used to state that interactions do not occur. Also, given that fin whales occur in the same waters as this fishery and have been found entangled in gear of unknown origin, the gear could belong to any fixed-gear fishery.

*Response:* Observer coverage was placed in this fishery during the period 1999–2003. To date, NMFS does not have any confirmed, observer documented interactions between this stock and this fishery. Therefore, NMFS has removed the WNA stock of fin whales from the list of species killed/injured in the Mid-Atlantic gillnet fishery.

*Comment 20:* One commenter supported the reclassification of the Mid-Atlantic menhaden purse seine fishery and encouraged NMFS to implement an observer program for this fishery.

*Response:* NMFS has reclassified the Mid-Atlantic menhaden purse seine fishery as a Category II fishery, effective September 21, 2006. As a Category II fishery, NMFS may place observers in

the fishery; however, initiation of observer coverage is dependent on resources. Also see response to comment 7.

*Comment 21:* One commenter recommended NMFS expedite investigations of Gulf of Mexico bottlenose dolphin stock structure and reevaluate which fisheries’ classifications may be affected by the updated information.

*Response:* Bottlenose dolphin stock structure in the Gulf of Mexico needs to be further defined in order to re-evaluate classification of the blue crab trap/pot and menhaden purse seine fisheries, as well as other fisheries that may be interacting with bottlenose dolphins in this area. NMFS research in the Gulf of Mexico in 2005–2006, as well as future planned research in this area, will assist in furthering our understanding of bottlenose dolphin stock structure in the Gulf of Mexico so as to better evaluate impacts of these and other fisheries. NMFS will consider these research results in analysis for future LOFs.

*Comment 22:* One commenter suggested NMFS compare the distribution of fishing effort in the Southeast Atlantic inshore gillnet fishery with the distribution of marine mammals (especially bottlenose dolphins) in the region, and reclassify the fishery as Category II if overlap occurs to an appreciable degree.

*Response:* NMFS will continue to monitor fishing effort and evaluate bottlenose dolphin strandings for evidence of gillnet-related fishery interactions in and around inshore waters of the Southeast to determine the need for future reclassification of the fishery.

*Comment 23:* Three commenters recommended NMFS reclassify gillnet fisheries operating in the Southeast Atlantic, specifically the Southeast Atlantic gillnet fishery, as Category I because of their potential involvement in the January 2006 death of a North Atlantic right whale calf and to enable NMFS to fully assess their level of interaction with marine mammals.

*Response:* NMFS determined the January 2006 death of a right whale calf was the result of entanglement and injury to the whale by gillnet gear in the Southeast U.S. Restricted Area; however, NMFS has not determined which specific gillnet fishery was responsible for the interaction. There are two gillnet fisheries that traditionally operate in this Southeast Atlantic: the Southeast Atlantic gillnet fishery and the Southeastern U.S. Atlantic shark gillnet fishery. Both are currently classified as Category II

fisheries. A fishery classified as Category I 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). Without definitive information regarding which fishery was involved, NMFS did not attribute the death of this right whale calf to either fishery. Therefore, elevation of the Southeast Atlantic gillnet fisheries to Category I is not warranted at this time. NMFS continues to classify these fisheries as a Category II, where they are subject to observer coverage.

Management measures were implemented following the January 2006 entanglement death of a right whale calf. NMFS issued a temporary rule effective February 15, 2006, through March 31, 2006 (71 FR 8223, February 16, 2006), restricting gillnet use in the area as required by the implementing regulations for the Atlantic Large Whale Take Reduction Plan (ALWTRP; 50 CFR 229.32(g)(1)). Specifically, the regulations state that if a serious injury or mortality of a right whale occurs in the Southeast U.S. Restricted Area during the North Atlantic right whale calving season (November 15 through March 31) as a result of an entanglement by gillnet gear, NMFS shall close that area to gillnet gear for the remainder of the time period (March 31). The regulations state NMFS shall also close that area to gillnet gear that same time period in each subsequent year, unless NMFS’ Assistant Administrator revises the restricted period in accordance with 50 CFR 229.32(g)(2) or unless alternate measures are implemented.

*Comment 24:* Two commenters recommended that NMFS add North Atlantic right whales to the list of species killed/injured in the Southeast Atlantic gillnet fishery, as a result of the possibility this fishery was responsible for the January 2006 death of a right whale calf. In addition, one commenter recommended that humpback whales be added to the list of species killed/injured for all fixed gear fisheries in their range because most gear found on entangled whales cannot be attributed to a specific fishery.

*Response:* Right and humpback whales may become entangled in fixed gears. However, NMFS has not documented any marine mammal mortalities or serious injuries incidental to any other fixed gears that have not already been described in this annual LOF. Without reasonable information regarding which fishery is involved in entanglements of right and humpback whales, NMFS does not identify all fixed gear fisheries as being responsible

for injuries and/or mortalities. However, NMFS will continue to classify these fisheries as Category II by analogy.

#### Summary of Changes to the LOF for 2006

The following summarizes changes to the LOF in 2006 in fishery classification, fisheries listed on the LOF, the number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery. The placement and definition of U.S. commercial fisheries for 2006 are identical to those provided in the LOF for 2005 with the following exceptions.

#### Commercial Fisheries in the Pacific Ocean

##### Fishery Classification

The "AK Bering Sea and Aleutian Islands Greenland turbot longline fishery" is reclassified from Category II to Category III.

The "CA sardine purse seine fishery" is elevated from Category III to Category II. The proposed 2006 LOF stated that this fishery was elevated in part by analogy "to other Category II purse seine fisheries (e.g., CA anchovy)." Specifically, the fishery is elevated in part by analogy with the CA anchovy, mackerel, tuna purse seine fishery and the CA squid purse seine fishery.

##### Addition of Fisheries to the LOF

The "American Samoa longline fishery" is added to the LOF as a Category III fishery.

The "Western Pacific squid jig fishery" is added to the LOF as a Category III fishery.

The "HI Kona crab loop net fishery" is added to the LOF as a Category III fishery.

The "HI offshore pen culture fishery" is added to the LOF as a Category III fishery.

The "CA marine shellfish aquaculture fishery" is added to the LOF as a Category III fishery.

The "CA white seabass enhancement net pen fishery" is added to the LOF as a Category III fishery.

##### Removal of Fisheries from the LOF

The "HI net unclassified fishery" is removed from the LOF.

The "AK miscellaneous finfish pair trawl" is removed from the LOF. This was a new fishery in Alaskan waters in 1996 and was classified as Category II pending additional information on interactions with marine mammals. It was classified as Category II by analogy with pair trawl fisheries in the North Atlantic, particularly the U.S. North Atlantic large pelagics pair trawl

fishery, which demonstrated high levels of mortality and serious injury for some marine mammal species. NMFS did not propose to remove this fishery in the proposed LOF for 2006 (71 FR 78, April 24, 2006). NMFS has since learned that there have been no reported mortalities or serious injuries of marine mammals in this fishery since its addition to the LOF. In addition, the fishery is not currently in operation, with the exception of two currently inactive permits issued by the Alaska Department of Fish and Game. NMFS will reevaluate the removal of this fishery if new information on interactions with marine mammals is presented.

##### Fishery Name and Organizational Changes and Clarifications

The "HI tuna fishery" is renamed the "HI tuna handline fishery."

The "HI deep sea bottomfish fishery" is renamed the "HI Main Hawaiian Islands and Northwest Hawaiian Islands deep sea bottomfish fishery."

The "HI coral diving fishery" is renamed the "HI black coral diving fishery."

The "HI other fishery" is renamed the "HI charter vessel fishery."

##### Number of Vessels/Persons

The estimated number of participants in the "HI gillnet fishery" is updated to 35.

The estimated number of participants in the "HI opelu/akule net fishery" is updated to 12.

The estimated number of participants in the "HI purse seine fishery" is updated to 23.

The estimated number of participants in the "HI fish pond fishery" is updated to N/A. NMFS is retaining this fishery on the LOF as there may be participants in the near future.

The estimated number of participants in the "HI throw net, cast net fishery" is updated to 14.

The estimated number of participants in the "HI trolling, rod and reel fishery" is updated to 1,321.

The estimated number of participants in the "HI lobster trap fishery" is updated to 0. Fourteen permits are available if this fishery reopened.

The estimated number of participants in the "HI aku boat, pole and line fishery" is updated to 4.

The estimated number of participants in the "HI inshore handline fishery" is updated to 307.

The estimated number of participants in the "HI tuna handline fishery" (proposed name change from the "HI tuna fishery", see Fishery Name and Organizational Changes and Clarifications section) is updated to 298.

The estimated number of participants in the "HI main Hawaiian Islands and Northwest Hawaiian Islands deep sea bottomfish fishery" (proposed name change from the "HI deep sea bottomfish fishery", see Fishery Name and Organizational Changes and Clarifications section) is updated to 387.

The estimated number of participants in the "HI black coral diving fishery" (proposed name change from the "HI coral diving fishery", see Fishery Name and Organizational Changes and Clarifications section) is updated to 1.

The estimated number of participants in the "HI handpick fishery" is updated to 37.

The estimated number of participants in the "HI lobster diving fishery" is updated to 19.

The estimated number of participants in the "HI squidding, spear fishery" is updated to 91.

The estimated number of participants in the "AK BSAI Greenland turbot longline fishery" is updated to 12.

##### List of Species That are Incidentally Injured or Killed

###### California Squid Purse Seine Fishery

Common dolphins, stock unknown, are added to the list of marine mammal species and stocks incidentally injured or killed by the CA squid purse seine fishery.

###### HI Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, and Oceanic Sharks Longline/Set Line Fishery

The Hawaiian stocks of Blaineville's beaked whales and Pantropical spotted dolphins are added to the list of marine mammal species and stocks incidentally injured or killed by the HI swordfish, tuna, billfish, mahi mahi, wahoo, and oceanic sharks longline/set line fishery.

###### HI Inshore Handline Fishery

The Hawaiian stock of bottlenose dolphins is removed from the list of marine mammal species and stocks incidentally injured or killed by the HI inshore handline fishery.

###### HI Tuna Handline Fishery

The Hawaiian stocks of bottlenose dolphins and rough tooth dolphins are removed from the list of marine mammal species and stocks incidentally injured or killed by the Hawaii tuna handline fishery (proposed name change from "Hawaii tuna fishery", see Fishery Name and Organizational Changes and Clarifications section).

###### CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery

Corrections are made to errors in the list of marine mammal species and



stocks incidentally injured or killed by the CA/OR thresher shark/swordfish drift gillnet fishery. Specifically, the CA/OR/WA Pacific coast stock of killer whales is changed to the Eastern North Pacific offshore stock, and the CA/OR/WA stock of long-beaked common dolphins is changed to the CA stock. Additionally, the Northern and Southern species of Pacific white-sided dolphins are combined to reflect how these species are currently characterized in the SARs.

#### *WA, OR, CA Groundfish Trawl Fishery*

Corrections are made to errors in the list of marine mammal species and stocks injured or killed incidental to the WA, OR, CA groundfish trawl fishery. Specifically, the Central North Pacific stock of Pacific white-sided dolphins is changed to the CA/OR/WA stock, and the Western stock of Steller sea lions is changed to the Eastern stock.

#### *Alaska Fisheries*

The 2004 LOF revised the Federally managed fisheries in Alaska into more discrete fisheries according to area, gear, and target species in order to more accurately reflect the fisheries as managed under Federal Fishery Management Plans. At that time, the marine mammal stocks associated with the newly delineated fisheries in the LOF were not revised accordingly. The following marine mammal stocks are added to the list of species and stocks incidentally injured or killed in the following Federal fisheries.

#### *AK Bering Sea, Aleutian Islands Flatfish Trawl Fishery*

The Eastern North Pacific stock of Northern fur seals, the Bering Sea stocks of harbor porpoise and harbor seals, and the Alaska stocks of bearded seals, spotted seals, and walrus are added to the list of marine mammal species and stocks injured or killed incidental to the AK BSAI flatfish trawl fishery.

#### *AK Bering Sea, Aleutian Islands Pollock Trawl Fishery*

The Bering Sea stock of harbor seals and the Alaska stocks of Dall's porpoise, minke whales, ribbon seals, and spotted seals are added to the list of marine mammal species and stocks injured or killed incidental to the AK BSAI pollock trawl fishery.

#### *AK Bering Sea, Aleutian Islands Pacific Cod Longline Fishery*

The Alaska stock of ribbon seals and the Western U.S. stock of Steller sea lions are added to the list of marine mammal species and stocks injured or

killed incidental to the AK BSAI Pacific cod longline fishery.

#### *AK Gulf of Alaska Sablefish Longline Fishery*

The Eastern U.S. stock of Steller sea lions and the North Pacific stock of sperm whales are added to the list of marine mammal species and stocks injured or killed incidental to the AK GOA sablefish longline fishery.

#### *AK Bering Sea, Aleutian Islands Pacific Cod Trawl Fishery*

The Western U.S. stock of Steller sea lions and the Bering Sea stock of harbor seals are added to the list of marine mammal species and stocks injured or killed incidental to the AK BSAI Pacific cod trawl fishery.

#### *AK Gulf of Alaska Pacific Cod Trawl Fishery*

The Western U.S. stock of Steller sea lions is added to the list of marine mammal species and stocks injured or killed incidental to the AK GOA Pacific cod trawl fishery.

#### *AK Gulf of Alaska Pollock Trawl Fishery*

The Western U.S. stock of Steller sea lions, the Northeast Pacific stock of fin whales, and the North Pacific stock of Northern elephant seals are added to the list of marine mammal species and stocks injured or killed incidental to the AK GOA pollock trawl fishery.

#### *AK Gulf of Alaska Pacific Cod Pot Fishery*

The GOA stock of harbor seals are added to the list of marine mammal species and stocks injured or killed incidental to the AK GOA Pacific cod pot fishery.

#### *AK, WA, OR, CA Commercial Passenger Fishing Vessel Fishery*

The Eastern and Western U.S. stocks of Steller sea lions and an unknown stock of killer whales are added to the list of marine mammal species and stocks injured or killed incidental to the AK, WA, OR, CA commercial passenger fishing vessel fishery.

#### *AK Southeast Alaska Crab Pot Fishery*

The Central North Pacific (Southeast AK) stock of humpback whales is added to the list of marine mammal species and stocks injured or killed incidental to the AK Southeast Alaska crab pot fishery.

#### *AK Southeast Alaska Shrimp Pot Fishery*

The Central North Pacific (Southeast AK) stock of humpback whales is added to the list of marine mammal species

and stocks injured or killed incidental to the AK Southeast Alaska shrimp pot fishery.

#### *AK Yakutat Salmon Set Gillnet Fishery*

The Central North Pacific (Southeast AK) stock of humpback whales is added to the list of marine mammal species and stocks injured or killed incidental to the AK Yakutat salmon set gillnet fishery.

#### *AK Kodiak Salmon Set Gillnet Fishery*

The Western U.S. stock of Steller sea lions is added to the list of marine mammal species and stocks injured or killed incidental to the AK Kodiak salmon set gillnet fishery.

#### *Alaska Bering Sea, Aleutian Islands Flatfish Trawl Fishery*

The Eastern North Pacific transient stock of killer whales is removed from the list of marine mammals species and stocks injured or killed in the Alaska BSAI flatfish trawl fishery.

#### *Alaska Bering Sea, Aleutian Islands Pollock Trawl Fishery*

The Eastern North Pacific resident stock of killer whales is removed from the list of marine mammals species and stocks incidentally injured or killed in the Alaska BSAI pollock trawl fishery.

#### *Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean*

##### *Fishery Classification*

The "Chesapeake Bay inshore gillnet fishery" is elevated from Category III to Category II.

The "Mid-Atlantic menhaden purse seine fishery" is elevated from Category III to Category II.

##### *Addition of Fisheries to the LOF*

The "Southeast Atlantic inshore gillnet fishery" is added to the LOF as a Category III fishery.

##### *Fishery Name and Organizational Changes and Clarifications*

The list of target species associated with the "Southeast Atlantic gillnet fishery" is expanded to include the following target species: king mackerel, Spanish mackerel, whiting, bluefish, pompano, spot, croaker, little tunny, bonita, jack crevalle, and cobia. Atlantic sturgeon are listed as a species of concern under the ESA and are also managed under a fishery management plan. A moratorium on possession and harvest of this species currently exists throughout the U.S. East Coast. Additionally, fishing for shad in ocean waters is prohibited by Southeast coastal states and is therefore no longer

included as a target species of the Southeast Atlantic gillnet fishery.

#### Number of Vessels/Persons

The estimated number of participants in the “Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery” is updated to 94.

#### List of Species That are Incidentally Injured or Killed

##### *Mid-Atlantic Gillnet Fishery*

The Western North Atlantic stock of fin whales is removed from the list of marine mammal species and stocks incidentally injured or killed incidental to the Mid-Atlantic gillnet fishery.

##### *Atlantic Ocean, Gulf of Mexico, Caribbean Commercial Passenger Fishing Vessel Fishery*

Several bottlenose dolphin stocks are added to the list of marine mammal species and stocks incidentally injured or killed incidental to the Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery. These bottlenose dolphin stocks include the Western North Atlantic coastal, Eastern Gulf of Mexico coastal, Northern Gulf of Mexico coastal, and Western Gulf of Mexico coastal.

##### *Northeast Bottom Trawl Fishery*

The Western North Atlantic offshore stock of bottlenose dolphins and the Western North Atlantic stock of striped dolphins are removed from the list of marine mammal species and stocks injured or killed incidental to the Northeast bottom trawl fishery.

#### List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels/participants is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the most recent LOF is used.

The tables also list the marine mammal species and stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience injury or mortality in a given fishery, but also

includes species or stocks for which there are anecdotal records of interaction. Additionally, species identified by logbook entries may not be verified. Not all species or stocks identified are the reason for a fishery’s placement in a given category. NMFS has designated those stocks that are responsible for a current fishery’s classification by a “1”.

There are several fisheries classified in Category II that have no recently documented interactions with marine mammals, or interactions that did not result in a serious injury or mortality. Justifications for placement of these fisheries, which are greater than 1 percent of a stock’s PBR level, are by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of a “Category II fishery” in 50 CFR 229.2. NMFS has designated those fisheries originally listed by analogy in Tables 1 and 2 by a “2” after that fishery’s name.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
Category I		
GILLNET FISHERIES:		
CA angel shark/halibut and other species set gillnet (> 3.5 in. mesh)	58	California sea lion, U.S. Harbor seal, CA Harbor porpoise, Central CA <sup>1</sup> Long-beaked common dolphin, CA Northern elephant seal, CA breeding Sea otter, CA Short-beaked common dolphin, CA/OR/WA

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
CA/OR thresher shark/swordfish drift gillnet (≥ 14 in. mesh)	85	Baird's beaked whale, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Cuvier's beaked whale, CA/OR/WA Dall's porpoise, CA/OR/WA Fin whale, CA/OR/WA Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA-Mexico Killer whale, Eastern North Pacific offshore Long-beaked common dolphin, CA Mesoplodont beaked whale, CA/OR/WA Northern elephant seal, CA breeding Northern fur seal, San Miguel Island Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Pygmy sperm whale, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA <sup>1</sup> Sperm whale, CA/OR/WA Steller sea lion, Eastern U.S. Striped dolphin, CA/OR/WA
LONGLINE/SET LINE FISHERIES:		
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line	140	Blainville's beaked whale, HI Bottlenose dolphin, HI False killer whale, HI <sup>1</sup> Humpback whale, Central North Pacific Pantropical spotted dolphin, HI Risso's dolphin, HI Short-finned pilot whale, HI Spinner dolphin, HI Sperm whale, HI
Category II		
GILLNET FISHERIES:		
AK Bristol Bay salmon drift gillnet <sup>2</sup>	1,903	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Spotted seal, AK Steller sea lion, Western U.S. <sup>1</sup>
AK Bristol Bay salmon set gillnet <sup>2</sup>	1,014	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Spotted seal, AK
AK Cook Inlet salmon drift gillnet	576	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA <sup>1</sup> Harbor seal, GOA Steller sea lion, Western U.S.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA <sup>1</sup> Harbor seal, GOA Sea otter, Southwest AK Steller sea lion, Western U.S.
AK Metlakatla/Annette Island salmon drift gillnet <sup>2</sup>	60	None documented

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK Peninsula/Aleutian Islands salmon drift gillnet <sup>2</sup>	164	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet <sup>2</sup>	116	Harbor porpoise, Bering Sea Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	541	Dall's porpoise, AK Harbor porpoise, GOA <sup>1</sup> Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Steller sea lion, Western U.S. <sup>1</sup>
AK Southeast salmon drift gillnet	481	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific <sup>1</sup> Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet <sup>2</sup>	170	Gray whale, Eastern North Pacific Harbor seal, Southeast AK Humpback whale, Central North Pacific (Southeast AK)
CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery (mesh size > 3.5 inches and < 14 inches) <sup>2</sup>	24	California sea lion, U.S. Long-beaked common dolphin, CA Short-beaked common dolphin, CA/OR/WA
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded)	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA <sup>1</sup> Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Southeast salmon purse seine	416	Humpback whale, Central North Pacific <sup>1</sup>
CA anchovy, mackerel, tuna purse seine	110	Bottlenose dolphin, CA/OR/WA offshore <sup>1</sup> California sea lion, U.S. Harbor seal, CA
CA sardine purse seine <sup>2</sup>	110	California sea lion, U.S.
CA squid purse seine	65	Common dolphin, unknown Short-finned pilot whale, CA/OR/WA <sup>1</sup>
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands flatfish trawl	26	Bearded seal, AK Harbor porpoise, Bering Sea Harbor seal, Bering Sea Killer whale, AK resident <sup>1</sup> Northern fur seal, Eastern North Pacific Spotted seal, AK Steller sea lion, Western U.S. <sup>1</sup> Walrus, AK
AK Bering Sea, Aleutian Islands pollock trawl	120	Dall's porpoise, AK Harbor seal, AK Humpback whale, Central North Pacific <sup>1</sup> Humpback whale, Western North Pacific <sup>1</sup> Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient <sup>1</sup> Minke whale, AK Ribbon seal, AK Spotted seal, AK Steller sea lion, Western U.S. <sup>1</sup>

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Pacific cod longline	114	Killer whale, AK resident <sup>1</sup> Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient <sup>1</sup> Ribbon seal, AK Steller sea lion, Western U.S.
CA pelagic longline <sup>2</sup>	6	California sea lion, U.S. Risso's dolphin, CA/OR/WA
OR swordfish floating longline <sup>2</sup>	0	None documented
OR blue shark floating longline <sup>2</sup>	1	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific <sup>1</sup> Humpback whale, Western North Pacific <sup>1</sup>
Category III		
GILLNET FISHERIES:		
AK Cook Inlet salmon set gillnet	745	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Steller sea lion, Western U.S.
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Harbor seal, GOA Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less	341	None documented
Hawaii gillnet	35	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented
AK octopus/squid purse seine	2	None documented
AK roe herring and food/bait herring beach seine	8	None documented

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK roe herring and food/bait herring purse seine	624	None documented
AK salmon beach seine	34	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II)	953	Harbor seal, GOA
CA herring purse seine	100	California sea lion, U.S. Harbor seal, CA
HI Kona crab loop net	42	None documented
HI opelu/akule net	12	None documented
HI purse seine	23	None documented
HI throw net, cast net	14	None documented
WA (all species) beach seine or drag seine	235	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA marine shellfish aquaculture	unknown	None documented
CA salmon enhancement rearing pen	>1	None documented
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented
OR salmon ranch	1	None documented
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries	1,530 (330 AK)	None documented
AK salmon troll	2,335	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	< 50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
Guam tuna troll	50	None documented
HI trolling, rod and reel	1,321	None documented
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Greenland turbot longline	12	Killer whale, AK resident Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK Bering Sea, Aleutian Islands rockfish longline	17	None documented
AK Bering Sea, Aleutian Islands sablefish longline	63	None documented
AK Gulf of Alaska halibut longline	1,302	None documented
AK Gulf of Alaska Pacific cod longline	440	None documented
AK Gulf of Alaska rockfish longline	421	None documented
AK Gulf of Alaska sablefish longline	412	Sperm whale, North Pacific Steller sea lion, Eastern U.S.
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish)	731	None documented
American Samoa longline	138	None documented
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	8	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	87	Harbor seal, Bering Sea Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands rockfish trawl	9	None documented
AK Gulf of Alaska flatfish trawl	52	None documented
AK Gulf of Alaska Pacific cod trawl	101	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	83	Fin whale, Northeast Pacific Northern elephant seal, North Pacific Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	45	None documented
AK food/bait herring trawl	3	None documented
AK miscellaneous finfish otter or beam trawl	6	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
WA, OR, CA groundfish trawl	585	California sea lion, U.S. Dall's porpoise, CA/OR/WA Harbor seal, OR/WA coast Northern fur seal, Eastern Pacific Pacific white-sided dolphin, CA/OR/WA Steller sea lion, Eastern U.S.
WA, OR, CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Aleutian Islands sablefish pot	8	None documented
AK Bering Sea, Aleutian Islands Pacific cod pot	76	None documented
AK Bering Sea, Aleutian Islands crab pot	329	None documented

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK Gulf of Alaska crab pot	unknown	None documented
AK Gulf of Alaska Pacific cod pot	154	Harbor seal, GOA
AK Southeast Alaska crab pot	unknown	Humpback whale, Central North Pacific (Southeast AK)
AK Southeast Alaska shrimp pot	unknown	Humpback whale, Central North Pacific (Southeast AK)
AK octopus/squid pot	72	None documented
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	Gray whale, Eastern North Pacific
WA, OR, CA sablefish pot	176	None documented
WA, OR shrimp pot/trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	0	Hawaiian monk seal
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline and mechanical jig	100	None documented
AK North Pacific halibut handline and mechanical jig	93	None documented
AK octopus/squid handline	2	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	<50	None documented
HI aku boat, pole and line	4	None documented
HI Main Hawaiian Islands, Northwest Hawaiian Islands deep sea bottomfish	387	Hawaiian monk seal
HI inshore handline	307	None documented
HI tuna handline	298	Hawaiian monk seal
WA groundfish, bottomfish jig	679	None documented
Western Pacific squid jig	6	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	30	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented
BAIT PENS:		



TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
WA/OR/CA bait pens	13	California sea lion, U.S.
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	1	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	3	None documented
AK herring spawn on kelp	363	None documented
AK urchin and other fish/shellfish	471	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI black coral diving	1	None documented
HI fish pond	N/A	None documented
HI handpick	37	None documented
HI lobster diving	19	None documented
HI squidding, spear	91	None documented
WA, CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	Killer whale, stock unknown Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
HI charter vessel	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented

List of Abbreviations and Symbols Used in Table 1: AK - Alaska; CA - California; GOA - Gulf of Alaska; HI - Hawaii; OR - Oregon; WA - Washington; <sup>1</sup> - Fishery classified based on serious injuries and mortalities of this stock are greater than 1 percent, but less than 50 percent of the stock's PBR; <sup>2</sup> - Fishery classified by analogy.

TABLE 2.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
Category I		
GILLNET FISHERIES:		

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Mid-Atlantic gillnet	>655	Bottlenose dolphin, WNA coastal <sup>1</sup> Bottlenose dolphin, WNA offshore <sup>1</sup> Common dolphin, WNA Gray seal, WNA Harbor porpoise, GME/BF <sup>1</sup> Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine <sup>1</sup> Long-finned pilot whale, WNA Minke whale, Canadian east coast <sup>1</sup> Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast sink gillnet	341	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF <sup>1</sup> Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, WNA <sup>1</sup> Minke whale, Canadian east coast <sup>1</sup> North Atlantic right whale, WNA <sup>1</sup> Risso's dolphin, WNA White-sided dolphin, WNA
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	94	Atlantic spotted dolphin, Northern GMX Atlantic spotted dolphin, WNA Bottlenose dolphin, GMX outer continental shelf Bottlenose dolphin, GMX, continental shelf edge and slope Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA <sup>1</sup> Mesoplodon beaked whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Pygmy sperm whale, WNA <sup>1</sup> Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA <sup>1</sup>
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Fin whale, WNA Harbor seal, WNA Humpback whale, WNA <sup>1</sup> Minke whale, Canadian east coast <sup>1</sup> North Atlantic right whale, WNA <sup>1</sup>
TRAWL FISHERIES:		
Mid-Atlantic mid-water trawl (including pair trawl)	620	Bottlenose dolphin, WNA offshore Common dolphin, WNA <sup>1</sup> Long-finned pilot whale, WNA <sup>1</sup> Risso's dolphin, WNA Short-finned pilot whale, WNA <sup>1</sup> White-sided dolphin, WNA <sup>1</sup>
Category II		
GILLNET FISHERIES:		
Chesapeake Bay inshore gillnet <sup>2</sup>	45	None documented

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Gulf of Mexico gillnet <sup>2</sup>	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal <sup>1</sup>
Northeast anchored float gillnet <sup>2</sup>	133	Harbor seal, WNA Humpback whale, WNA White-sided dolphin, WNA
Northeast drift gillnet <sup>2</sup>	unknown	None documented
Southeast Atlantic gillnet <sup>2</sup>	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	6	Atlantic spotted dolphin, WNA Bottlenose dolphin, WNA coastal <sup>1</sup> North Atlantic right whale, WNA
TRAWL FISHERIES:		
Mid-Atlantic bottom trawl	>1,000	Common dolphin, WNA <sup>1</sup> Long-finned pilot whale, WNA <sup>1</sup> Short-finned pilot whale, WNA <sup>1</sup>
Northeast mid-water trawl (including pair trawl)	17	Harbor seal, WNA Long-finned pilot whale, WNA <sup>1</sup> Short-finned pilot whale, WNA <sup>1</sup> White-sided dolphin, WNA
Northeast bottom trawl	1,052	Common dolphin, WNA Harbor porpoise, GME/BF Harp seal, WNA <sup>1</sup> Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA <sup>1</sup>
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal <sup>1</sup> West Indian manatee, FL <sup>1</sup>
Atlantic mixed species trap/pot <sup>2</sup>	unknown	Fin whale, WNA Humpback whale, Gulf of Maine
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal <sup>1</sup> Bottlenose dolphin, Western GMX coastal
Mid-Atlantic menhaden purse seine <sup>2</sup>	22	Bottlenose dolphin, WNA coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal <sup>1</sup> Harbor porpoise, GME/BF
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal <sup>1</sup>
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal <sup>1</sup>
POUND NET FISHERIES:		
Virginia pound net	187	Bottlenose dolphin, WNA coastal <sup>1</sup>

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—  
Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Delaware River inshore gillnet	60	None documented
Long Island Sound inshore gillnet	20	None documented
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet	32	None documented
Southeast Atlantic inshore gillnet	unknown	None documented
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	972	None documented
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX outer continental shelf Bottlenose dolphin, Northern GMX continental shelf edge and slope
Gulf of Mexico mixed species trawl	20	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian Manatee, FL
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
U.S. Atlantic tuna purse seine	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
U.S. Mid-Atlantic hand seine	>250	None documented
LONGLINE/HOOK-AND-LINE FISHERIES:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	46	None documented
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	Humpback whale, WNA
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	<125	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented
U.S. Mid-Atlantic eel trap/pot	>700	None documented
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	Gray seal, Northwest North Atlantic Harbor porpoise, GME/BF Harbor seal, WNA Minke whale, Canadian east coast White-sided dolphin, WNA
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the North Carolina roe mullet stop net)	751	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—  
Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel	4,000	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, WNA coastal

List of Abbreviations and Symbols Used in Table 2: FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; NC - North Carolina; SC - South Carolina; TX - Texas; WNA - Western North Atlantic; <sup>1</sup> - Fishery classified based on serious injuries and mortalities of this stock are greater than 1 percent, but less than 50 percent of the stock's PBR; <sup>2</sup> - Fishery classified by analogy.

### Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. For convenience, the factual basis leading to the certification is repeated below.

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA, obtain an Authorization Certificate, and pay a fee of \$25 (with the exception of those in regions with a registration integrated with existing state and Federal permitting processes). Additionally, fishers may be subject to a take reduction plan and requested to carry an observer. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. NMFS has estimated that approximately 41,730 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register. However, registration has been integrated with existing state or Federal registration programs for the majority of these fisheries so that the majority of fishers do not need to register separately under the MMPA. Currently, approximately 600 fishers register directly with NMFS under the MMPA authorization program.

Though this rule would affect approximately 500 small entities, the \$25 registration fee, with respect to anticipated revenues, is not considered a significant economic impact. If a vessel is requested to carry an observer, fishers will not incur any economic costs associated with carrying that observer. As a result of this certification, an initial regulatory flexibility analysis was not prepared. In the event that reclassification of a fishery to Category I or II results in a take reduction plan, economic analyses of the effects of that

plan will be summarized in subsequent rulemaking actions.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648-0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal injuries or mortalities has been approved by OMB under OMB control number 0648-0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA (1995 EA). NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 EA and the 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This rule would not make any significant

change in the management of reclassified fisheries, and therefore, this rule is not expected to change the analysis or conclusion of the 2005 EA. If NMFS takes a management action, for example, through the development of a Take Reduction Plan (TRP), NMFS will first prepare an environmental document, as required under NEPA, specific to that action.

This rule would not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under ESA section 7 for that action.

This rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: August 15, 2006.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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