

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 980724195-8195-01; I.D. 070798F]

RIN 0648-AK95

Proposed List of Fisheries for 1999

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes changes for 1999 to the List of Fisheries (LOF) as required by the Marine Mammal Protection Act (MMPA) and proposes changes to the regulations implementing section 118 of the MMPA. The proposed LOF for 1999 reflects new information on interactions between commercial fisheries and marine mammals. Under the MMPA, a commercial fishery is to be placed on the LOF in one of three categories based upon the level of serious injury and mortality of marine mammals that occurs incidental to that fishery. The categorization of a fishery in the LOF determines whether the fishery is subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: Comments on the proposed rule must be received by November 9, 1998.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding the burden-hour estimates or any other aspect of the collection of information requirements contained in this proposed rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cathy Eisele, Office of Protected Resources, 301-713-2322; Kim Thounhurst, Northeast Region, 508-281-9138; Kathy Wang, Southeast Region, 813-570-5312; Irma Lagomarsino, Southwest Region, 562-980-4016; Brent Norberg, Northwest Region, 206-526-6733; Steven Zimmerman, Alaska Region, 907-586-7235.

SUPPLEMENTARY INFORMATION:

Background

History of the List of Fisheries

Section 118 of the MMPA requires that NMFS publish, at least annually, a list of fisheries that places all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals in each fishery.

In 1995, NMFS published proposed and final regulations implementing section 118 of the MMPA (60 FR 31666, June 17, 1995, and 60 FR 45086, August 30, 1995, respectively).

Definitions of the fishery classification criteria for Category I, II, and III fisheries are found in the implementing regulations for section 118 of the MMPA (50 CFR part 229). In addition, these definitions are described in the preambles to the final rule implementing section 118 (60 FR 45086, August 30, 1995) and in the final LOF for 1996 (60 FR 67063, December 28, 1995). Because they provide the basis for the classification of fisheries in the LOF, these criteria are 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.

Tier 1: If the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of this stock, all fisheries interacting with this stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier 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.

Tier 1, therefore, considers the cumulative fishery mortality and serious injury for a particular stock, while Tier 2 considers fishery-specific mortality for

a particular stock. Additional details regarding how threshold percentages between the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA.

Requirements for Vessels Participating in Category I and II Fisheries

The primary functions of the LOF are to inform the public of the levels of interactions with marine mammals in various commercial fisheries and to identify fisheries for which efforts to reduce these interactions may be necessary. In addition, the LOF informs the fishing industry of which fisheries are subject to certain provisions of the MMPA.

Registration: Fishers participating in Category I or II fisheries are required, under 50 CFR 229.4, to be registered under the MMPA. Unless the Authorization Certificate program for a given fishery is integrated and coordinated with existing state fishery registration programs, fishers must obtain a registration or renewal packet from NMFS and submit the completed registration or renewal form and the required registration fee to the appropriate NMFS Regional Office. Normally, NMFS will send the fisher an Authorization Certificate, program decal, and reporting forms within 60 days of receiving the registration or renewal form and registration fee.

NMFS has successfully integrated registration under the MMPA with state fishery registration in Washington, Oregon, Alaska, and certain New England fisheries, and it anticipates being able to integrate registration with state fishery registration in North Carolina and California in the near future. The benefits of integrating registration with existing programs have included a reduction or elimination of fees for some commercial fishers and a reduction in paperwork that must be completed by fishers and by NMFS.

Reporting: Vessel owners or operators, or fishers, in the case of nonvessel fisheries, in Category I, II, or III fisheries must comply with 50 CFR 229.6 and report all incidental mortalities and injuries of marine mammals during the course of commercial fishing operations to NMFS Headquarters. "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 and must be reported. Instructions for submission of reports are found at 50 CFR 229.6(a).

Observers: Fishers participating in Category I and II fisheries are required, upon request, to accommodate an observer aboard their vessels. Observer requirements may be found at 50 CFR 229.7.

Take Reduction Plans: Fishers participating in Category I and II fisheries are required to comply with any applicable take reduction plans. NMFS may develop and implement take reduction plans for any Category I fishery or Category II fishery that interacts with a strategic stock of marine mammals.

Sources of Information Reviewed During Development of the Proposed LOF for 1999

NMFS' Stock Assessment Reports (SARs) provide the best available information on both the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels for marine mammal stocks. The proposed LOF for 1999 is based on information provided in both the final SARs for 1996 (63 FR 60, January 2, 1998) and the draft SARs for 1998. The draft SARs for 1998 provide new estimates of total serious injury and mortality of marine mammals that occur incidental to some U.S. commercial fisheries and provide new estimates of PBR levels for some marine mammal stocks. If information in the 1998 draft SARs changes as a result of public comments or additional review by the Scientific Review Groups (SRGs), these updates will be incorporated in the final LOF for 1999.

Proposed Changes to the LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the SARs for all observed fisheries to determine whether proposed changes in fishery classification were warranted. NMFS also reviewed other sources of new information, including marine mammal strandings data and other information that is not included in the SARs.

NMFS is proposing the following specific changes to the LOF that would take effect in 1999. With the exception of these proposed changes, NMFS proposes to retain the fishery classifications as published in the final LOF for 1998. Under section 118 of the MMPA, NMFS must include all U.S. commercial fisheries on the LOF. Accordingly, NMFS is publishing this comprehensive table listing all U.S. commercial fisheries. NMFS solicits comments on this list and should be advised of any fishery that is not included in this list. As a result of comments or information received after

the publication of the proposed 1999 LOF, NMFS may redefine existing fishery definitions, recategorize fisheries, or add and delete fisheries from this list for the final 1999 LOF.

Changes Resulting From New Draft SARs

The table in the LOF that lists all U.S. commercial fisheries, the number of participants in each fishery, and the marine mammal stocks and/or species incidentally killed or injured in each fishery was updated to include the following changes in the draft Pacific and Atlantic SARs:

1. The CA/OR/WA stocks of Mesoplodont beaked whales were proposed to be designated as non-strategic;
 2. The CA/OR/WA stock of minke whales was proposed to be designated as non-strategic; and
 3. The Western North Atlantic stock of white-sided dolphin is proposed to be designated as strategic.
- The draft SAR for Alaska provided updates to the number of participants in each Alaska commercial fishery and to the list of species and/or stocks incidentally injured or killed in each fishery. When possible, the number of participants provided in the table in the LOF reflects the number of permits fished in 1996. For those fisheries for which this information was not available, the number of permits issued was used to represent the number of participants.

Midwater Trawl Fishery for Atlantic Herring

The current LOF includes a Category III listing for the Gulf of Maine, U.S. mid-Atlantic coastal herring trawl fishery. This fishery was originally listed in 1989 and comprised approximately five participants who operated primarily in Maine state waters. Since that time, information has become available indicating that vessels target herring in other areas, including Jeffreys Ledge, offshore on Georges Bank, and the nearshore waters of Rhode Island, Connecticut, and New York. Based on discussions with New England Fishery Management Council staff developing the Herring Fishery Management Plan, NMFS determined that there is little difference between the boats or gear fishing in coastal areas (such as Maine state waters) and in areas such as Jeffreys Ledge or offshore; thus, these fisheries should be considered part of the same herring midwater trawl fishery.

This herring trawl fishery utilizes midwater trawl gear, a gear type used in the Atlantic squid, mackerel, butterfish

trawl fishery, a Category II fishery known to take several species of cetaceans. Herring are an important prey for several Atlantic stocks of marine mammals, including the Gulf of Maine stock of harbor porpoise, a strategic stock. NMFS believes that this fishery operates at times and in locations of significant densities of marine mammals. Therefore, NMFS is proposing that "Atlantic herring midwater trawl (including pair trawl)" be added to the LOF as a Category II fishery. NMFS is proposing that the new listing for "Atlantic herring midwater trawl (including pair trawl)" include those vessels currently operating in the Gulf of Maine, U.S. Mid-Atlantic coastal herring trawl fishery. Thus, the Category III listing for the Gulf of Maine, U.S. Mid-Atlantic coastal herring trawl would be removed from the LOF.

Target species and bycatch: These vessels primarily target Atlantic herring, *Clupea harengus*, but may catch small amounts of anadromous "river herring" species such as blueback herring and alewife. There are several other finfish bycatch species; however, the most prominent species are mackerel, spiny dogfish, and silver hake.

Gear types: The basic gear type in this fishery is midwater trawl gear, which is defined in 50 CFR 648.2 as follows: "Midwater trawl gear means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time."

Several vessels in this fishery are using midwater trawls that are used as pair trawls (one net towed by two vessels). Although there may be a higher potential for incidental serious injury or mortality of marine mammals in pair trawl gear, NMFS has no evidence that it would be at the Category I level; therefore, NMFS proposes to include these vessels in the Category II Atlantic herring midwater trawl fishery until data on differential bycatch rates become available.

In addition, there may be internal waters processing (IWP) or joint venture (JV) operations in this fishery in certain times and areas. NMFS does not believe that a separate listing for IWP and JV operations is warranted at this time. NMFS is investigating the status of these fisheries and their potential impacts on marine mammals and will propose a separate categorization for this fishery in the LOF, if appropriate.

Although the effort data indicate that a significant amount of herring is landed by bottom trawl gear, this primarily results from a compilation of a large number of hauls with a small amount of

herring bycatch, rather than from vessels actually targeting herring. If any vessels are targeting herring with bottom trawls, that effort would be considered to be part of the existing Category III listing for the North Atlantic bottom trawl fishery.

Number of participants: According to landings data from NMFS and the Maine Department of Marine Resources, there are approximately 17 participants in this fishery, including pair trawl vessels.

Area of operation: Atlantic herring is distributed over continental shelf waters from Labrador to Cape Hatteras.

Therefore, this fishery could occur anywhere in that area, although it is likely to be limited by factors such as distance from processing plants and economic viability. The primary areas of operation are Maine state waters, Jeffreys Ledge, southern New England, and Georges Bank.

Northeast Multispecies Sink Gillnet Fishery

This fishery was listed in the 1996 LOF as the "New England multispecies sink gillnet fishery, including species as defined in the Multispecies Fisheries Management Plan and spiny dogfish and monkfish." In the 1997 LOF, the name of this fishery was changed to the "Northeast multispecies sink gillnet fishery, including species as defined in the Multispecies Fisheries Management Plan and spiny dogfish and monkfish."

NMFS is proposing to change the name of this fishery to the "Northeast sink gillnet fishery" to better reflect the target species and geographic boundaries of this fishery and to avoid future confusion between this fishery and the boundaries and target species addressed in the Northeast Multispecies Fishery Management Plan. The Northeast sink gillnet fishery would include effort for all target species (i.e., fishery would no longer be limited to only multispecies finfish, monkfish, and dogfish). NMFS is not proposing to change the geographic boundaries of this fishery; thus, the geographic boundary between the Northeast sink gillnet fishery and the Mid-Atlantic coastal gillnet fishery would remain as 72°30' W. long.

Gulf of Mexico Menhaden Purse Seine Fishery

The Gulf of Mexico menhaden purse seine fishery is currently classified as a Category III fishery. Based on a review of 1992–95 observer data, NMFS is proposing that this fishery be placed in Category II.

Tier I evaluation: Currently, there is no information available on other

Category I or II fisheries interacting with coastal bottlenose dolphin stocks in the Gulf of Mexico. As a result, takes of a given stock in any fishery would need to exceed 10 percent of that stock's PBR to elevate that fishery to Category II.

Tier II evaluation: An observer program conducted by Louisiana State University in 1992, 1994, and 1995 recorded nine captures of coastal bottlenose dolphin, eight from the western coastal stock, and one from the northern coastal stock. Three of the captures from the western coastal bottlenose stock were reported as mortalities. A total of 1,038 sets was observed over the 3 years in which the observer program operated. The only effort data currently available are for 1994, in which 26,097 sets were recorded in the fishery, and for 1995, when 21,150 sets were recorded. Assuming that an average of the effort in 1994 and 1995 (23,624 sets) is representative of the effort expanded over the years 1992, 1994, and 1995, the three observed mortalities would extrapolate to an annual average of 68 mortalities per year. All lethal takes occurred in the area encompassing the western coastal stock of bottlenose dolphin which has a PBR of 29 animals.

Because the annual average of 68 mortalities per year exceeds 50 percent of the PBR level for the western coastal bottlenose stock, this would ordinarily justify placement of this fishery in Category I; however, NMFS is proposing to place this fishery in Category II, pending a revised analysis of the stock structure for bottlenose dolphin in the Gulf of Mexico. The Atlantic SRG has advised that the Atlantic and Gulf of Mexico bottlenose dolphin stock structures be re-examined and has suggested that the three Gulf coastal stocks be combined. Under this scenario, the PBR levels for the three Gulf coastal stocks would result in a combined PBR of 154 animals, thus placing this fishery in Category II. NMFS has not yet determined whether this would be a biologically appropriate stock designation, but NMFS believes that provisionally placing this fishery in Category II is appropriate, pending a revised analysis of stock structure for bottlenose dolphin in the Gulf of Mexico.

North Carolina Haul Seine Fishery

NMFS has received reports that the North Carolina haul seine fishery operates in several mid-Atlantic states, including North Carolina, Virginia and New Jersey; therefore, NMFS proposes to change the name of this fishery to the "Mid-Atlantic haul seine."

Discussion of Other Commercial Fisheries

Atlantic Squid, Mackerel, Butterfish Trawl Fishery

In June 1998, the Atlantic SRG recommended that NMFS consider reclassifying the Atlantic squid, mackerel, butterfish trawl fishery as a Category I fishery because estimated marine mammal takes in this fishery exceed the PBR level for two stocks of marine mammals.

The Northeast Fisheries Science Center (NEC) has reviewed the current mortality estimates for the Atlantic squid, mackerel, butterfish trawl fishery and found that there is substantial uncertainty surrounding these estimates. As a result, the NEC plans to re-evaluate the estimates of marine mammal mortality that occur incidental to this fishery after data collected in 1997 are analyzed.

Because the marine mammal mortality estimates are currently under revision, NMFS is not proposing to reclassify this fishery for the 1999 LOF. NMFS expects that the draft 1999 SARs will include updated marine mammal mortality estimates for this fishery, and NMFS will re-evaluate the classification of this fishery when the draft 1999 SARs become available.

U.S. Mid-Atlantic Coastal Gillnet Fishery

The U.S. mid-Atlantic coastal gillnet fishery is currently classified as a Category II fishery, and information regarding incidental bycatch of coastal bottlenose dolphin in this fishery was discussed in the proposed LOF (62 FR 28657, May 27, 1997) and in the final LOF for 1998 (63 FR 5748, February 4, 1998). No new information has been received since the publication of the final 1998 LOF to change the basis for the original Category II classification of this fishery; therefore, the fishery will remain in Category II. However, data from the current mid-Atlantic coastal gillnet observer program should be available in time for the LOF for 2000, and the status of this fishery will be reviewed at that time.

Atlantic Ocean, Gulf of Mexico Blue Crab Trap/Pot Fishery

Over the 5-year period from 1993 to 1997, eight bottlenose dolphins stranded in the Southeast Region with identifiable crab pot gear attached. During the same time period, an additional 22 bottlenose dolphin carcasses were recovered entangled in crab pot-type line from an unidentifiable source, or displaying marks on the skin consistent with

entanglement in such gear. These strandings were distributed throughout the Atlantic and Gulf of Mexico states. Manatees have also been reported entangled in this gear, but most of these animals were disentangled and released alive.

The eight confirmed dolphin/crab pot entanglements span three different geographic areas and may represent at least three bottlenose dolphin stocks, including the south Atlantic area, the south Florida area, and the Gulf of Mexico. Most, if not all, of the dolphin carcasses were recovered in inshore waters where bay, sound, and estuarine stocks of bottlenose dolphins reside.

The Atlantic SARs currently do not recognize separate coastal bottlenose stocks in the U.S. south Atlantic and south Florida area. The Atlantic SARs have not yet recognized bay, sound or estuarine bottlenose stocks in the Atlantic because very little survey data and stock structure information are available for these animals. Currently, NMFS is conducting extensive studies to gain a better understanding of bottlenose dolphin stock structure in these areas.

Until coastal bottlenose dolphin stock structure is better understood and PBR levels are available, NMFS cannot conduct the tier analyses required to determine the appropriate categorization of this fishery. Therefore, this fishery will remain in Category III at this time. Both NMFS and the Fish and Wildlife Service (FWS) are

concerned about an apparent increase in manatee and dolphin entanglements in crab pot gear in recent years and intend to monitor this situation closely. FWS is currently conducting a background study regarding what is currently known about this fishery in Florida waters. NMFS also hopes to conduct a field study of dolphin/crab pot interactions in the near future.

North Carolina Inshore Gillnet Fishery

Recently, one bottlenose dolphin stranded in North Carolina with evidence of fishery interactions, and two other bottlenose dolphins were disentangled and released from gillnet gear in inshore North Carolina waters. These incidences indicate that a small number of bottlenose dolphin mortalities may have resulted from gillnets in inside waters of North Carolina. Based on current bottlenose stock structure information, these animals were most likely from the Western North Atlantic coastal stock. Assuming that these animals are from the Western North Atlantic coastal bottlenose stock, the annual take of this stock in the North Carolina inshore gillnet fishery would be less than 1 percent. Based on this information, NMFS does not propose to recategorize this fishery at this time; however, given the uncertainties regarding bottlenose dolphin stock structure, it is possible that the bottlenose dolphins in these inshore North Carolina waters may not be from the Western North Atlantic

coastal stock. As noted, the stock structure for coastal bottlenose stocks is currently under revision. If new information on bottlenose dolphin stock structure indicates that this fishery is interacting with a separate stock of coastal bottlenose dolphin, NMFS will re-evaluate the categorization of this fishery.

The current observer program for the mid-Atlantic coastal gillnet fishery will likely incorporate the North Carolina inshore gillnet fishery in its monitoring program, so more conclusive information on possible interactions between this fishery and marine mammals should be available in the near future.

Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line Fishery

The Hawaii swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery is classified as a Category III fishery. This fishery has been observed on a mandatory basis since February 1994 with low (3.5 to 4.5 percent) levels of observer coverage. Between 1994 and 1997, there were 10 observed incidental takes of marine mammals. At least five species of marine mammals were observed taken along with two unidentified animals one of which was reported as an unidentified whale and the other as an unidentified cetacean. The only observed mortality was a short-finned pilot whale in 1996.

Species	1994	1995	1996	1997	Total
Risso's dolphin		12		22	4
Spinner dolphin				31	1
False killer whale				21	1
Bottlenose dolphin		21			1
Unidentified cetacean			11		1
Unidentified whale			31		1
Short-finned pilot whale			41		1
Total	0	3	3	4	10

¹Gear interaction type unconfirmed/unknown.
²Hooked.
³Snagged.
⁴Entangled and Killed.

Based on the observed mortality and injuries of several species of cetaceans, the Pacific SRG recommended, in April 1998, that NMFS propose to reclassify this fishery as a Category II fishery in the proposed 1999 LOF.

Estimates of total annual incidental marine mammal mortality and serious injury are not yet available for this fishery. PBR levels are unavailable for most of the stocks of marine mammals identified as incidentally taken in this fishery because the abundance of these

stocks within the Hawaii Exclusive Economic Zone is unknown (Barlow et al., 1997). The only stock for which a PBR level has been calculated is for spinner dolphins; however, this is a limited PBR level (6.8 animals) which is based on a minimum count of spinner dolphins from the west coast of Hawaii only.

The majority of the marine mammals that have been incidentally taken in this fishery were released alive with injuries. NMFS has not yet considered these

injuries in the classification of the Hawaii longline fishery; NMFS will be publishing proposed guidelines for determining what constitutes a serious injury to a marine mammal after the guidelines are finalized and will evaluate these incidental injuries at that time. There has been only one confirmed incidental marine mammal mortality observed in the Hawaii longline fishery over a 4-year monitoring period. NMFS believes that,

even though observer coverage levels were low, this level of incidental mortality constitutes a "remote likelihood of incidental mortality or serious injury of marine mammals"; therefore, NMFS is proposing to retain this fishery in Category III. Consideration of incidental serious injuries in the Hawaii longline fishery may warrant the reclassification of this fishery in the LOF for 2000.

NMFS recognizes the importance of monitoring marine mammal bycatch in this fishery and of developing sound marine mammal mortality estimates. NMFS will be increasing observer coverage of the fishery this year. Although this observer coverage is intended to primarily monitor the incidental take of sea turtles, all takes of marine mammals will be recorded. NMFS is making changes to the sampling protocol for specimens and to the recording of interactions and considering making changes to the sampling design for observer coverage to improve the marine mammal bycatch information that is collected through this observer program. NMFS will continue to evaluate observer data and any new information that become available on the level of serious injury and mortality of marine mammals that is occurring incidental to this fishery and will propose a recategorization of this fishery as appropriate.

Although the Hawaii longline fishery is a Category III fishery, participants in this fishery are already required to take observers onboard, to submit vessel logbooks, to report all interactions with marine mammals, and to obtain a limited entry permit to participate in this fishery.

California Offshore Longline Fishery

The California offshore longline fishery is a small Category III fishery, with less than 10 vessels currently operating. During part of the year, vessels in the California longline fishery operate in the same times and areas as vessels in the Hawaii swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery. Although the California offshore longline fishery has the potential to interact with some of the same marine mammal stocks as the Hawaii longline fishery, NMFS has no evidence of serious injuries or mortalities of marine mammals associated with the California offshore longline fishery.

Other Proposed Changes to the List of Fisheries

The following changes are being made to clarify the name of the fishery to: (1) include the specific gear type or target

species, (2) update the estimated number of vessels/persons in the fishery, (3) revise the name of the fishery to identify its exact geographic area of operation, or (4) update the stock or species of marine mammals that are documented as incidentally injured or killed in the fishery.

Table 1, Category II: The name of the Alaska Peninsula/Aleutians salmon drift gillnet fishery is changed to the Alaska Peninsula/Aleutian Islands salmon drift gillnet fishery.

Table 1, Category II: The name of the Alaska Peninsula/Aleutian Island salmon set gillnet fishery is changed to the Alaska Peninsula/Aleutian Islands salmon set gillnet fishery.

Table 1, Category II: The name of the Alaska Cook Inlet drift gillnet fishery is changed to the Alaska Cook Inlet salmon drift gillnet fishery.

Table 1, Category II: The name of the Alaska Bristol Bay drift gillnet fishery is changed to the Alaska Bristol Bay salmon drift gillnet fishery.

Table 1, Category II: The name of the Alaska Bristol Bay set gillnet fishery is changed to the Alaska Bristol Bay salmon set gillnet fishery.

Table 1, Category II: The name of the Alaska pair trawl fishery is changed to the Alaska miscellaneous finfish pair trawl fishery.

Table 1, Category III: The name of the Alaska Prince William Sound set gillnet fishery is changed to the Alaska Prince William Sound salmon set gillnet fishery.

Table 1, Category III: The estimated number of vessels/persons for the Alaska Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet fishery is changed from 1,519 to 1,419.

Table 1, Category III: The name of the Alaska Metlakatla purse seine fishery is changed to the Alaska Metlakatla salmon purse seine fishery.

Table 1, Category III: The estimated number of vessels/persons for the Alaska Bering Sea, Gulf of Alaska finfish fishery is changed from 277 to 274.

Table 1, Category III: The name of the Alaska other finfish handline and mechanical jig fishery is changed to the Alaska miscellaneous finfish handline and mechanical jig fishery.

Table 1, Category III: The estimated number of vessels/persons for the Alaska, Washington, Oregon, California commercial passenger fishery is changed from >17,000 (16,276 Alaska only) to >4,000 (3,523 Alaska only).

Table 2, Category I: The stock of marine mammals that are injured/killed in the Northeast sink gillnet fishery is clarified for the following species: Common dolphin, Western North Atlantic (WNA); Fin whale, WNA;

Spotted dolphin, WNA; False killer whale, WNA; Harp seal, WNA.

Table 2, Category II: The Western North Atlantic coastal stock of bottlenose dolphin is added as a stock that incurs injury or mortality incidental to the North Carolina inshore gillnet fishery.

Table 2, Category III: The name of the Gulf of Maine, southeast U.S. Atlantic coastal shad, sturgeon, gillnet (includes waters of North Carolina) fishery is changed to the Gulf of Maine, southeast U.S. Atlantic coastal shad, sturgeon, gillnet fishery. Fishermen participating in the North Carolina fishery are more appropriately identified under the U.S. mid-Atlantic coastal gillnet fishery.

Table 2, Category III: The list of marine mammal species/stocks incidentally injured/killed in the Florida east coast, Gulf of Mexico pelagics king and spanish mackerel gillnet fishery is changed from Bottlenose dolphin, Western Gulf of Mexico (GMX) coastal; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, GMX bay, sound, and estuarine, to none documented. There have been no documented interactions of marine mammals with this fishery. The fishery uses run-around gillnets and employs spotter planes to find schooling mackerel which make interactions with marine mammals highly improbable.

Proposed Changes to Regulations at 50 CFR Part 229

NMFS is proposing several revisions and technical edits to 50 CFR part 229. These changes are described here.

Definitions

In several places, the term "take" was replaced with the term "serious injury and mortality" to better reflect the statutory language of section 118 of the MMPA.

NMFS is proposing to remove the definitions of the term "Incidental, but not intentional, take" and the term "Incidental mortality". NMFS is proposing instead to include a definition of the term "Incidental".

NMFS is proposing to add a definition for the term "Integrated fishery" under § 229.2. This term is currently defined and discussed in several sections of part 229, but was not previously defined in § 229.2 *Definitions*.

Requirements for Category I and II Fisheries

Section 229.4(b)(2)(v) currently requires that vessel/gear owners provide a description of the gear type and approximate time, duration, and

locations of each fishery operation. Because this information is incorporated within the fishery title, it is not necessary for fishers to provide NMFS with this additional fishery description information. NMFS is proposing to remove this requirement.

NMFS is proposing to remove all references to an "annual decal" in part 229. The NMFS' Marine Mammal Authorization Program decals do not have an annual expiration and may not always be issued every year; therefore, NMFS is proposing that the term "decal" be used instead of the term "annual decal".

Under § 229.4(e)(3), Authorization Certificates must be signed and dated by the owner or the authorized representative of the owner in order to be valid. NMFS is proposing to remove this provision since the possession of a certificate is sufficient to provide an authorization for taking of marine mammals.

NMFS made several additional minor changes to § 229.4, including updating the telephone numbers of NMFS regional offices, clarifying registration requirements for participants in integrated fisheries, and restructuring sections to improve clarity and readability.

Requirements for Category III Fisheries

The marine mammal deterrence provisions under the 1994 Amendments to the MMPA should pertain to all commercial fishermen; however, § 229.5 erroneously indicates that these provisions apply only to participants in Category I and Category II fisheries. NMFS is proposing to correct the wording of this section to clarify that this deterrence provision applies to all vessel owners and crew members engaged in commercial fishing operations.

Reporting Requirements

NMFS is proposing to modify the reporting requirements under § 229.6 to include all commercial fishermen, regardless of the category of fishery they participate in, and to clarify the registration requirements for participants in non-vessel fisheries. Instead of providing the vessel name and registration number, participants in non-vessel fisheries would be required to submit the gear permit number.

Monitoring of Incidental Mortalities and Serious Injuries

Because observers may not always be onboard the vessel and may monitor bycatch from alternate platforms, NMFS

proposes to remove all reference to an "onboard observer".

Under § 229.7(c)(4)(i), vessel operators and crew members must provide "adequate accommodations" for observers. In order to ensure the health and safety of marine mammal observers, NMFS is proposing to further define the specific accommodations that vessel operators must provide. Vessel operators or crew members must provide "food, toilet, bathing, and sleeping accommodations that are equivalent to those provided to the crew". These accommodations should be provided at no cost to the observer or to NMFS.

Section 229.7 allows observers to sample, retain, or store marine mammals or other protected species specimens. NMFS is proposing to specifically allow observers to sample, retain, or store target and non-target catch, which would include marine mammals or other protected species specimens.

Under § 229.7, the current observer requirements apply only to Authorization Certificate holders; however, the intent of these regulations is to apply to all vessel owners/operators or operators of nonvessel gear participating in Category I or II fisheries; therefore, NMFS is proposing to have the observer requirements apply to "vessel owners/operators" instead of "Authorization Certificate holders".

Under § 229.7(c)(6), marine mammals incidentally taken in commercial fishing operations may be retained only if authorized by NMFS personnel, designated contractors, an official observer, or by a scientific permit in the possession of the vessel operator. NMFS believes that it is more appropriate to place this provision with the other prohibitions under § 229.3.

Emergency Regulations

NMFS has clarified the regulatory language regarding emergency actions. Under § 229.9, the Assistant Administrator may promulgate emergency actions if the incidental mortality or serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate significant adverse impact on a stock or species. If the stock is one for which a take reduction team has not been established or, in the case of a Category III fishery that may be adversely impacting the stock, the Assistant Administrator may immediately review the stock assessment for this stock and classification of this fishery to determine whether a take reduction

team should be established. In this section, NMFS has clarified that the Assistant Administrator, in reviewing the fishery classification, would also determine whether a recategorization of the fishery is appropriate.

Take Reduction Plans

NMFS has added a new introductory section under the subpart addressing take reduction plan regulations. This new section clarifies that the MMPA authorizes NMFS to impose regulations governing commercial fishing operations, when necessary, to implement a take reduction plan in order to protect or restore a marine mammal stock or species covered by the plan. This introductory section is followed by sections addressing the regulatory measures of individual take reduction plans.

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 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 1996 LOF is used. The tables also list the marine mammal species/stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fishers' reports. This list includes all species or stocks known to incur injury or mortality for a given fishery; however, not all species or stocks identified are necessarily independently responsible for a fishery's categorization. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to injure or kill marine mammals, as discussed in the final LOF for 1996 (60 FR 45086, December 28, 1995).

Commercial fisheries in the Pacific Ocean are listed in Table 1; commercial fisheries in the Atlantic Ocean are listed in Table 2. An asterisk (*) indicates that the stock is a strategic stock; a plus (+) indicates that the stock is listed as threatened or endangered under the Endangered Species Act.

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

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
Category I		
GILLNET FISHERIES:		
CA angel shark/halibut and other species large mesh (>3.5in) set gillnet.	58	Harbor porpoise, central CA Common dolphin, short-beaked, CA/OR/WA Common dolphin, long-beaked CA California sea lion, U.S. Harbor seal, CA
CA/OR thresher shark/swordfish drift gillnet	130	Northern elephant seal, CA breeding Steller sea lion, Eastern U.S.*+ Sperm whale, CA/OR/WA*+ Dall's porpoise, CA/OR/WA Pacific white sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore Short-beaked common dolphin CA/OR/WA Long-beaked common dolphin CA/OR/WA Northern right whale dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA* Baird's beaked whale, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Cuvier's beaked whale, CA/OR/WA Pygmy sperm whale, CA/OR/WA California sea lion, U.S. Northern elephant seal, CA breeding Humpback whale, CA/OR/WA-Mexico* Minke whale, CA/OR/WA Striped dolphin, CA/OR/WA Killer whale, CA/OR/WA Pacific coast Northern fur seal, San Miguel Island
Category II		
GILLNET FISHERIES:		
AK Prince William Sound salmon drift gillnet	509	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, GOA* Pacific white-sided dolphin, central North Pacific Harbor porpoise, GOA Dall's porpoise, AK
AK Peninsula/ Aleutian Islands salmon drift gillnet	163	Northern fur seal, Eastern Pacific* Harbor seal, GOA Harbor porpoise, Bering Sea Dall's porpoise, AK
AK Peninsula/ Aleutian Islands salmon set gillnet	110	Steller sea lion, Western U.S.*+ Harbor porpoise, Bering Sea
Southeast Alaska salmon drift gillnet	439	Steller sea lion, Eastern U.S.*+ Harbor seal, Southeast AK Pacific white-sided dolphin, central North Pacific Harbor porpoise, Southeast AK Dall's porpoise, AK Humpback whale, central North Pacific*+.
AK Cook Inlet salmon drift gillnet	560	Steller sea lion, Western U.S.*+ Harbor seal, GOA* Harbor porpoise, GOA Dall's porpoise, AK Beluga, Cook Inlet*
AK Cook Inlet salmon set gillnet	604	Steller sea lion, Western U.S.*+ Harbor seal, GOA* Harbor porpoise, GOA Beluga, Cook Inlet* Dall's porpoise, AK
AK Yakutat salmon set gillnet	139	Harbor seal, Southeast AK Gray whale, Eastern North Pacific
AK Kodiak salmon set gillnet	172	Harbor seal, GOA* Harbor porpoise, GOA Sea otter, Southwest AK

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

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
AK Bristol Bay salmon drift gillnet	1,884	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, Bering Sea Beluga, Bristol Bay Gray whale, Eastern North Pacific Spotted seal, AK Pacific white-sided dolphin, central North Pacific
AK Bristol Bay salmon set gillnet	941	Harbor seal, Bering Sea Beluga, Bristol Bay Gray whale, Eastern North Pacific Northern fur seal, Eastern Pacific* Spotted seal, AK
AK Metlakatla/ Annette Island salmon drift gillnet	60	None documented
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).	900	Harbor porpoise, inland WA Dall's porpoise, CA/OR/WA Harbor seal, WA inland
PURSE SEINE FISHERIES:		
CA anchovy, mackerel, tuna purse seine	150	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA*
AK Southeast salmon purse seine	357	Humpback whale, central North Pacific*+
TRAWL FISHERIES:		
AK miscellaneous finfish pair trawl	4	None documented
Longline fisheries		
OR swordfish floating longline	2	None documented
OR blue shark floating longline	1	None documented

Category III

GILLNESS FISHERIES		
AK Prince William Sound salmon set gillnet	26	Steller sea lion, Western U.S.*+ Harbor seal, GOA*
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1,491	None documented
AK roe herring and food/bait herring gillnet	1,687	None documented
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast
WA, OR lower Columbia River (includes tributaries) drift gillnet.	110	California sea lion, U.S. Harbor seal, OR/WA coast
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.	341	None documented
AK miscellaneous finfish set gillnet	4	Steller sea lion, Western U.S.*+
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK salmon purse seine (except Southeast Alaska, which is in Category II).	586	Harbor seal, GOA*
AK salmon beach seine	6	None documented
AK roe herring and food/bait herring purse seine	517	None documented
AK roe herring and food/bait herring beach seine	1	None documented
AK Metlakatla salmon purse seine	10	None documented
AK octopus/squid purse seine	2	None documented
CA herring purse seine	100	Bottlenose dolphin, CA coastal California sea lion, U.S. Harbor seal, CA
CA sardine purse seine	120	None documented
CA squid purse seine	145	California sea lion, U.S.
AK miscellaneous finfish purse seine	4	None documented
AK miscellaneous finfish beach seine	1	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented

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

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA (all species) beach seine or drag seine	235	None documented
HI purse seine	18	None documented
HI opelu/akule net	16	None documented
HI throw net, cast net	47	None documented
DIP NET FISHERIES		
WA, OR smelt, herring dip net	119	None documented
CA squid dip net	115	None documented
MARINE AQUACULTURE FISHERIES:		
WA, OR salmon net pens	21	California sea lion, U.S.
CA salmon enhancement rearing pen	≤1	None documented
OR salmon ranch	1	None documented
TROLL FISHERIES		
AK salmon troll	1149	Steller sea lion, Eastern U.S.*+
CA/OR/WA salmon troll	4,300	None documented
AK north Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,354	None documented
HI trolling, rod and reel	1,795	None documented
Guam tuna troll	50	None documented
Commonwealth of the Northern Mariana Islands tuna troll ..	50	None documented
American Samoa tuna troll	<50	None documented
HI net unclassified	106	None documented
LONGLINE/SET LINE FISHERIES:		
AK state waters sablefish long line/set line	840	None documented
Miscellaneous finfish/groundfish longline/set line	594	Harbor seal, GOA * Harbor seal, Bering Sea Dall's porpoise, AK Steller sea lion, Western U.S. Harbor seal, Southeast AK Northern elephant seal, CA breeding
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.	140	Hawaiian monk seal*+ Humpback whale, Central North Pacific*+ Risso's dolphin, HI Bottlenose dolphin, HI Spinner dolphin, HI Short-finned pilot whale, HI
WA, OR North Pacific halibut longline/set line	350	None documented
AK southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska sablefish longline/set line (federally regulated waters).	762	Northern elephant seal, CA breeding Killer whale, resident Killer whale, transient Steller sea lion, Western U.S. Pacific white-sided dolphin, central North Pacific Dall's porpoise, AK
AK halibut longline/set line (state and Federal waters)	2,882	Steller sea lion, Western U.S.*+
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
AK octopus/squid longline	2	None documented
CA shark/bonito longline/set line	10	None documented
TRAWL FISHERIES:		
WA, OR, CA shrimp trawl	300	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet).	62	None documented
AK Gulf of Alaska groundfish trawl	201	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, GOA* Dall's porpoise, AK Northern elephant seal, CA breeding
AK Bering Sea and Aleutian Islands groundfish trawl	193	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Killer whale, resident Killer whale, transient Pacific white-sided dolphin, central North Pacific Harbor porpoise, Bering Sea Harbor seal, Bering Sea Harbor seal, GOA* Bearded seal, AK Ringed seal, AK

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

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl. AK miscellaneous finfish otter or beam trawl AK food/bait herring trawl WA, OR, CA groundfish trawl	5 312 4 585	Spotted seal, AK Dall's porpoise, AK Ribbon seal, AK Northern elephant seal, CA breeding Sea otter, Southwest AK Pacific Walrus, AK None documented None documented None documented Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Pacific white-sided dolphin, central North Pacific Dall's porpoise, CA/OR/WA California sea lion, U.S. Harbor seal, OR/WA coast
POT, RING NET, AND TRAP FISHERIES: AK crustacean pot AK Bering Sea, GOA finfish pot WA, OR, CA sablefish pot WA, OR, CA crab pot WA, OR shrimp pot & trap CA lobster, prawn, shrimp, rock crab, fish potD608	1,496 274 176 1,478 254 None documented	Harbor porpoise, Southeast AK Harbor seal, GOA* Harbor seal, Bering Sea Sea otter, Southwest AK None documented None documented None documented None documented
OR, CA hagfish pot or trap HI lobster trap HI crab trap HI fish trap HI shrimp trap	25 15 22 19 5	None documented Hawaiian monk seal*+ None documented None documented None documented
HANDLINE AND JIG FISHERIES: AK North Pacific halibut handline and mechanical jig AK miscellaneous finfish handline and mechanical jig AK octopus/squid handline WA groundfish, bottomfish jig HI aku boat, pole and line HI inshore handline HI tuna HI deep sea bottomfish	266 258 2 679 54 650 144 434	None documented None documented None documented None documented None documented Bottlenose dolphin, HI Rough-toothed dolphin, HI Hawaiian monk seal*+ Bottlenose dolphin, HI Hawaiian monk seal*+
Guam bottomfish Commonwealth of the Northern Mariana Islands bottomfish American Samoa bottomfish	< 50 <50 <50	None documented None documented None documented
HARPOON FISHERIES: CA swordfish harpoon	228	None documented
POUND NET/WEIR FISHERIES: AK Southeast Alaska herring food/bait pound net WA herring brush weir	154 1	None documented None documented
BAIT PENS WA/OR/CA bait pens	13	None documented
DREDGE FISHERIES: Coastwide scallop dredge	106	None documented
DIVE, HAND/MECHINICAL COLLECTION FISHERIES: AK abalone AK dungeness crab AK herring spawn-on-kelp AK urchin and other fish/shellfish AK clam hand shovel AK clam mechanical/hydraulic1	9 3 200 442 162 9	None documented None documented None documented None documented None documented None documented WA herring spawn-on-kelp4None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection. CA abalone CA sea urchin HI squidding, spear	637 111 583 267	None documented. None documented. None documented. None documented.

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

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
HI lobster diving	6	None documented.
HI coral diving	2	None documented.
HI handpick	135	None documented.
WA shellfish aquaculture	684	None documented.
WA, CA kelp	4	None documented.
HI fish pond	10	None documented.
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	> 4,000 (3,523 AK only)	None documented.
AK octopus/squid "other"	19	None documented.
HI "other"	114	None documented.
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented.

* Marine mammal stock is strategic or is proposed to be listed as strategic in the draft SARs for 1998.

* Stock is listed as threatened or endangered under the Endangered Species Act (ESA) or as depleted under the MMPA.

List of Abbreviations Used in Table 1

- AK—Alaska
- CA—California
- HI—Hawaii
- GOA—Gulf of Alaska
- OR—Oregon
- WA—Washington

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

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Category I		
GILLNET FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics drift gillnet.	15	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Sperm whale, WNA*+ Dwarf sperm whale, WNA* Cuvier's beaked whale, WNA* True's beaked whale, WNA* Gervais' beaked whale, WNA* Blainville's beaked whale, WNA* Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White-sided dolphin, WNA* Common dolphin, WNA* Atlantic spotted dolphin, WNA* Pantropical spotted dolphin, WNA* Striped dolphin, WNA Spinner dolphin, WNA Bottlenose dolphin, WNA offshore Harbor porpoise, GME/BF*
Northeast sink gillnet	341	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Minke whale, Canadian east coast Killer whale, WNA White-sided dolphin, WNA* Bottlenose dolphin, WNA offshore Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, WNA Common dolphin, WNA* Fin whale, WNA*+ Spotted dolphin, WNA False killer whale, WNA Harp seal, WNA
LOONGLINE FISHERIES:		

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

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.	361	Humpback whale, WNA*+ Minke whale, Canadian east coast Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* Atlantic spotted dolphin, WNA* Pantropical spotted dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore Bottlenose dolphin, GMX Outer Continental Shelf Bottlenose dolphin, GMX Continental Shelf Edge and Slope Atlantic spotted dolphin, Northern GMX Pantropical spotted dolphin, Northern GMX Risso's dolphin, Northern GMX Harbor porpoise, GME/BF*
TRAP/POT FISHERIES—LOBSTER: Gulf of Maine, U.S. mid-Atlantic lobster trap/pot	13,000	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Fin whale, WNA*+ Minke whale, Canadian east coast White-sided dolphin, WNA* Harbor seal, WNA
Category II		
GILLNET FISHERIES: U.S. mid-Atlantic coastal gillnet	>655	Humpback whale, WNA*+ Minke whale, Canadian east coast Bottlenose dolphin, WNA offshore Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Gulf of Maine small pelagics surface gillnet	133	Humpback whale, WNA*+ White-sided dolphin, WNA* Harbor seal, WNA
Southeastern U.S. Atlantic shark gillnet	12	Bottlenose dolphin, WNA coastal* North Atlantic right whale, WNA*+
TRAWL FISHERIES: Atlantic squid, mackerel, butterfish trawl	620	Common dolphin, WNA* Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White-sided dolphin, WNA*
Atlantic herring midwater trawl (including pair trawl)	17	None documented
PURSE SEINE FISHERIES: Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal
HAUL SEINE FISHERIES: Mid-Atlantic haul seine	25	Bottlenose dolphin, WNA coastal* Harbor porpoise, GME/BF*
STOP NET FISHERIES: North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal*
Category III		
GILLNET FISHERIES: Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Long Island Sound inshore gillnet	20	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Delaware Bay inshore gillnet	60	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Chesapeake Bay inshore gillnet	45	None documented

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

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally injured/killed
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal*+
Gulf of Mexico inshore gillnet (black drum, sheepshead, weakfish, mullet, spot, croaker).	unknown	None documented
Gulf of Maine, Southeast U.S. Atlantic coastal shad, sturgeon gillnet.	1,285	Minke whale, Canadian east coast Harbor porpoise, GME/BF* Bottlenose dolphin, WNA coastal*+
Gulf of Mexico coastal gillnet (includes mullet gillnet fishery in LA and MS).	unknown	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal
Florida east coast, Gulf of Mexico pelagics king and Spanish mackerel gillnet.	271	Bottlenose dolphin, GMX Bay, Sound, & Estuarine* Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine*
TRAWL FISHERIES:		
North Atlantic bottom trawl	1,052	Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* White-sided dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore
Mid-Atlantic, Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl.	>18,000	Bottlenose dolphin, WNA coastal*+
Gulf of Maine northern shrimp trawl	320	None documented
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented
Mid-Atlantic mixed species trawl	>1,000	None documented
Gulf of Mexico butterfish trawl	2	Atlantic spotted dolphin, Eastern GMX Pantropical spotted dolphin, Eastern GMX
Georgia, South Carolina, Maryland whelk trawl	25	None documented
Calico scallops trawl	200	None documented
Bluefish, croaker, flounder trawl	1550	None documented
Crab trawl	400	None documented
U.S. Atlantic monkfish trawl	unknown	Common dolphin, WNA*
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, Northwest North Atlantic Bottlenose dolphin, WNA coastal*+
Mid-Atlantic menhaden purse seine	22	None documented
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	unknown	None documented
U.S. mid-Atlantic hand seine	> 250	None documented
LOGLINE/HOOK-AND-LINE FISHERIES:		
Gulf of Maine tub trawl groundfish bottom longline/ hook-and-line.	46	Harbor seal, WNA Gray seal, Northwest North Atlantic
Southeastern U.S. Atlantic, Gulf of Mexico snapper-grouper and other reef fish bottom longline/hook-and-line.	3,800	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	124	None documented
Gulf of Maine, U.S. mid-Atlantic tuna, shark swordfish hook-and-line/harpoon.	26,223	None documented
Southeastern U.S. Atlantic, Gulf of Mexico & U.S. mid-Atlantic pelagic hook-and-line/harpoon.	1,446	None documented
TRAP/POT FISHERIES—LOBSTER, CRAB, AND FISH:		
Gulf of Maine, U.S. mid-Atlantic mixed species trap/pot	100	North Atlantic right whale, WNA*+, Humpback whale, WNA*+ Minke whale, Canadian east coast Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, Northwest North Atlantic
U.S. mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot.	30	None documented
U.S. mid-Atlantic eel trap/pot	>700	None documented

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

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Atlantic Ocean, Gulf of Mexico blue crab trap/pot	20,500	Bottlenose dolphin, WNA coastal* 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*+
Southeastern U.S. Atlantic, Gulf of Mexico, Caribbean spiny lobster trap/pot.	750	West Indian manatee, FL*+ Bottlenose dolphin, WNA coastal*+
STOP SEINE/WEIR/POUND FISHERIES: Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	North Atlantic right whale, WNA* Humpback whale, WNA*+ Minke whale, Canadian east coast Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, Northwest North Atlantic
U.S. mid-Atlantic mixed species stop/seine/weir (except the North Carolina roe mullet stop net).	500	None documented
U.S. mid-Atlantic crab stop seine/weir	2,600	None documented
DREDGE FISHERIES: Gulf of Maine, U.S. mid-Atlantic sea scallop dredge	233	None documented
U.S. mid-Atlantic offshore surfclam and quahog dredge	100	None documented
Gulf of Maine mussel	>50	None documented
U.S. mid-Atlantic/Gulf of Mexico oyster	7,000	None documented.
HAUL SEINE FISHERIES: Southeastern U.S. Atlantic, Caribbean haul seine	25	None documented.
BEACH SEINE FISHERIES: Caribbean beach seine	15	West Indian manatee, FL+.
DIVE, HAND/MECHANICAL COLLECTION FISHERIES: Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented.
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES: Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	None documented.

* Marine mammal stock is strategic or is proposed to be listed as strategic in the draft SARs for 1998.

+ Stock is listed as threatened or endangered under the ESA or as depleted under the MMPA.

AAAList of Abbreviations 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

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed LOF for 1999, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

Under existing regulations certain fishers must register, obtain an Authorization Certificate, and pay a fee of \$25. Such a certificate authorizes the taking of certain marine mammals incidental to commercial fishing operations. Currently, approximately 22,500 fishers are registered. The majority of these fishers do not need to register

separately under this program because their registration has been coordinated with existing state or Federal registration programs. All fishers participating in Category I and II fisheries are required to register under the MMPA. This proposed rule would require the registration of additional fishers that are classified in Category II, including participants in the Atlantic herring midwater trawl fishery (17 participants) and in the Gulf of Mexico menhaden fishery (50 participants). Some of these fishers may currently participate in other Category II fisheries and, therefore, may already be required to register under the MMPA. The application fee, with respect to expected revenues, is not considered significant because it represents under 0.01 percent of the total revenue. As a result, a regulatory flexibility analysis was not prepared.

This action proposes changes to the current List of Fisheries and reflects new information on commercial fisheries, marine mammals, and interactions between commercial fisheries and marine mammals. This proposed list informs the public of which U.S. commercial fisheries may be required in 1999 to comply with certain parts of the MMPA, including requirements to register for Authorization Certificates.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

This proposed rule does not contain new collection-of-information requirements subject to the Paperwork

Reduction Act; however, the proposed addition of two fisheries to Category II in the LOF would result in up to 70 new fishers being subject to collection-of-information requirements. Some of these fishers may currently participate in other Category II fisheries and, therefore, may already be required to register under the MMPA.

The collection of information required for the reporting of marine mammal injuries or mortalities to NMFS and for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control numbers 0648-0292 (0.15 hours per report) and 0648-0293 (0.25 hours per registration). Those burdens are not expected to change significantly if this proposed rule is adopted and may actually decrease if additional registration systems are integrated with existing programs. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see ADDRESSES).

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.

References

Barlow, J., et al. "U.S. Pacific Marine Mammal Stock Assessments: 1996. NOAA Tech. Mem. NMFS, NOAA-TM-NMFS-SWFSC-248." U.S. Dept. of Commerce, NOAA, National Marine Fisheries Service, Southwest Fisheries Science Center, 1997.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.1, paragraph (f) is revised to read as follows:

§ 229.1 Purpose and scope.

* * * * *

(f) Authorizations under this part do not apply to the intentional lethal taking of marine mammals in the course of commercial fishing operations except as provided for under §§ 229.4(k) and 229.5(f).

* * * * *

3. In § 229.2, the definition of "Category II fishery" is amended by removing the word "taking" and adding in its place the term "incidental serious injury and mortality"; the last sentence of paragraph (2) of the definition "Category III fishery" is revised; the definitions of "Fisher", "Incidental, but not intentional take" and "Incidental mortality" are removed; and the definitions of "Fisher or fisherman", "Incidental" and "Integrated Fishery" are added, to read as follows:

§ 229.2 Definitions.

* * * * *

Category III fishery. * * *. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is "remote" by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area or at the discretion of the Assistant Administrator.

* * * * *

Fisher or fisherman means the vessel owner or operator, or the owner or operator of gear in a nonvessel fishery.

* * * * *

Incidental refers to a non-intentional or accidental act that results from, but is not the purpose of, carrying out an otherwise lawful action.

* * * * *

Integrated fishery means a fishery for which the granting and the administration of Authorization Certificates have been integrated and coordinated with existing fishery license, registration, or permit systems and related programs.

* * * * *

4. In § 229.3, the word "taking" is removed from paragraph (c) and the term "injury or mortality" is added in its place, paragraphs (e) through (j) are redesignated as paragraphs (f) through (k), and new paragraph (e) is added to read as follows:

§ 229.3 Prohibitions.

* * * * *

(e) It is prohibited to retain any marine mammal incidentally taken in commercial fishing operations unless authorized by NMFS personnel, designated contractors or an official observer, or by a scientific research permit that is in the possession of the vessel operator.

* * * * *

§ 229.4 [Amended]

5. In § 229.4, paragraph (b)(2)(v) is removed; paragraphs (b)(2)(vi) and (c) are redesignated as paragraphs (b)(2)(v) and (b)(2)(vi), respectively; paragraphs (d) through (m) are redesignated as paragraphs (c) through (l); and in newly redesignated paragraph (g), the word "onboard" is removed.

6. In § 229.4, newly redesignated paragraphs (d)(1)(i) through (d)(1)(iii) are redesignated as paragraphs (d)(2)(i) through (d)(2)(iii); newly redesignated paragraphs (c) introductory text and, (c)(3) through (c)(5), (d)(1), (d)(2), and the first sentence of newly redesignated paragraph (e)(1) are revised; the last sentence of newly redesignated paragraph (d)(3) is removed; newly redesignated paragraph (e)(3) is amended by removing the term "annual" and newly redesignated paragraph (l) is amended by removing the phrase "and annual decals". Section 229.4, as amended, reads as follows:

§ 229.4 Requirements for Category I and II fisheries.

* * * * *

(c) *Address.* Unless the granting and administration of authorizations under part 229 is integrated and coordinated with existing fishery licenses, registrations, or related programs pursuant to paragraph (a) of this section, requests for registration forms and completed registration and renewal forms should be sent to the NMFS Regional Offices as follows:

* * * * *

(3) Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; telephone: 562-980-4001;

(4) Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930; telephone: 978-281-9254; or

(5) Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: 727-570-5312.

(d) *Issuance.* (1) For integrated fisheries, an Authorization Certificate or other proof of registration will be issued annually to each fisher registered for that fishery.

(2) For all other fisheries (i.e., non-integrated fisheries), NMFS will issue an Authorization Certificate and, if necessary, a decal to an owner or authorized representative who:

* * * * *

(e) * * * (1) If a decal has been issued under the conditions specified in paragraph (e)(2) of this section, the decal must be attached to the vessel on the port side of the cabin or, in the absence of a cabin, on the forward port side of the hull, and must be free of obstruction and in good condition.

* * * * *

7. In § 229.5, paragraph (c) is amended by removing the word "onboard"; paragraph (e) is amended by removing the phrase "a Category I or II fishery" and by adding in its place the phrase "commercial fishing operations"; and paragraph (d) is revised to read as follows:

§ 229.5 Requirements for Category III fisheries.

* * * * *

(d) *Monitoring.* Vessel owners engaged in a Category III fishery must comply with the observer requirements specified under § 229.7(d).

* * * * *

8. In § 229.6, paragraph (a) is amended by removing the words "Category I, II, and III" and by adding in their place the word "commercial"; and paragraph (b) is revised to read as follows:

§ 229.6 Reporting requirements.

* * * * *

(b) Participants in nonvessel fisheries must provide all of the information in paragraphs (a)(1) through (a)(4) of this section except, instead of providing the vessel name and vessel registration number, participants in nonvessel fisheries must provide the gear permit number.

* * * * *

9. In § 229.7, paragraphs (c)(4)(vi) and (c)(6) are removed; paragraphs (c)(4)(vii) through (c)(4)(x) are redesignated as paragraphs (c)(4)(vi) and (c)(4)(ix), respectively; the introductory text of paragraphs (b) and (c), and paragraphs (c)(1), (c)(2), (c)(4) introductory text, paragraph (c)(4)(i), newly redesignated (c)(4)(vi), and (c)(5), and (d) introductory text are revised to read as follows:

§ 229.7 Monitoring of incidental mortalities and serious injuries.

* * * * *

(b) Observer program. Pursuant to paragraph (a) of this section, the Assistant Administrator may observe

Category I and II vessels as necessary. Observers may, among other tasks:

* * * * *

(c) Observer requirements for participants in Category I and II fisheries.

(1) If requested by NMFS or by a designated contractor providing observer services to NMFS, a vessel owner/operator must take aboard an observer to accompany the vessel on fishing trips.

(2) After being notified by NMFS, or by a designated contractor providing observer services to NMFS, that the vessel is required to carry an observer, the vessel owner/operator must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips.

* * * * *

(4) The vessel owner/operator and crew must cooperate with the observer in the performance of the observer's duties including:

(i) Providing, at no cost to the observer, the United States government, or the designated observer provider, food, toilet, bathing, sleeping accommodations, and other amenities that are equivalent to those provided to the crew, unless other arrangements are approved in advance by the Regional Administrator;

* * * * *

(vi) Sampling, retaining and storing of marine mammal specimens, other protected species specimens, or target or non-target catch specimens, upon request by NMFS personnel, designated contractors, or the observer, if adequate facilities are available and if feasible;

* * * * *

(5) Marine mammals or other specimens identified in paragraph (c)(4)(vi) which are readily accessible to crew members, must be brought on board the vessel and retained for the purposes of scientific research if feasible and requested by NMFS personnel, designated contractors, or the observer. Specimens so collected and retained must, upon request by NMFS personnel, designated contractors, or the observer, be retained in cold storage on board the vessel, if feasible, until removed at the request of NMFS personnel, designated contractors, or the observer, retrieved by authorized personnel of NMFS, or released by the observer for return to the ocean. These biological specimens may be transported on board the vessel during the fishing trip and back to port under this authorization.

(d) Observer requirements for participants in Category III fisheries.

* * * * *

10. In § 229.8, the last sentence of paragraph (c) is redesignated as paragraph (d), and paragraph (b)(2) is revised to read as follows:

§ 229.8 Publication of List of Fisheries.

* * * * *

(b) * * *

(2) List the marine mammals that are incidentally injured or killed by commercial fishing operations and the estimated number of vessels or persons involved in each commercial fishery.

* * * * *

11. In § 229.9, paragraph (a)(3)(ii) is revised to read as follows:

§ 229.9 Emergency regulations.

(a) * * *

(3) * * *

(ii) Immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established and if recategorization of the fishery is warranted; and

* * * * *

12. In § 229.10, paragraphs (d) and (g)(1) are revised to read as follows:

§ 229.10 Penalties.

* * * * *

(d) Failure to comply with take reduction plans or emergency regulations issued under this part may result in suspension or revocation of an Authorization Certificate, and failure to comply with a take reduction plan or emergency regulation is also subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

* * * * *

(g) * * *

(1) Until the Authorization Certificate holder complies with the regulations under this part, the Assistant Administrator shall suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to report all incidental mortality and injury of marine mammals as required under § 229.6; or fails to take aboard an observer if requested by NMFS or its designated contractors.

* * * * *

§ 229.11 [Amended]

13. In § 229.11, paragraph (b) is amended by removing the parenthetical phrase (see ADDRESSES).

§ 229.20 [Amended]

14. In § 229.20, paragraph (f) is amended by removing the reference to

“§ 229.21(b)” and adding in its place a reference to “§ 229.20(b)”.

15. Under subpart C, a new § 229.30 is added to read as follows:

§ 229.30 Basis.

Section 118(f)(9) of the Act authorizes the Director, NMFS, to impose regulations governing commercial fishing operations, when necessary, to implement a take reduction plan in order to protect or restore a marine mammal stock or species covered by such a plan.

Dated: August 6, 1998.

Rolland A. Schmitten,

*Assistant Administrator for Fisheries,
National Marine Fisheries Services.*

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