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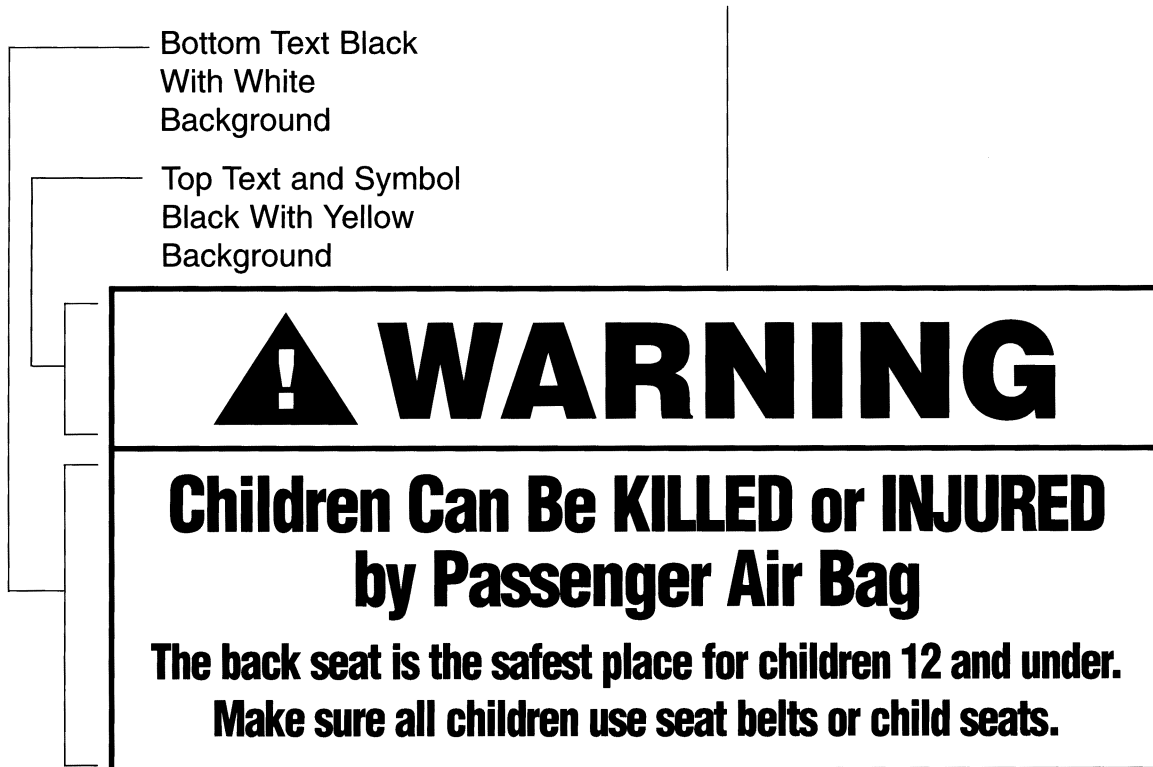


Figure 7. Removable Label on Dash.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 229**

[Docket No. 950605147-6368-05; I.D. 040996D]

RIN 0648-AH33

**Final List of Fisheries for 1997**

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

**ACTION:** Final rule.

**SUMMARY:** In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA), NMFS updates its final List of Fisheries (LOF) for 1997. The LOF classifies fisheries as Category I, II, or III, based on their level of incidental mortalities and serious injuries of marine mammals. The LOF

informs the public of the level of interactions with marine mammals in various U.S. commercial fisheries and which fisheries are subject to certain provisions of the MMPA, such as the requirement to register for Authorization Certificates. The registration of several fisheries under this program, referred to as the Marine Mammal Assessment Program (MMAP), has been successfully integrated with other existing registration or permitting systems. NMFS also amends the instructions for registration in part 229.

**EFFECTIVE DATES:** The amendments to part 229 are effective December 27, 1996. As of December 27, 1996, the effective period of the List of Fisheries for 1996 (60 FR 67063, Dec. 28, 1995) is extended to February 28, 1997. The changes to the List of Fisheries for 1997 are effective March 1, 1997.

**ADDRESSES:** Information and registration material for the region in which a fishery occurs, and reporting forms, may be obtained from the following addresses: NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298, Attn: Sandra Arvilla; NMFS, Southeast Region, 9721

Executive Center Drive North, St. Petersburg, FL 33702; NMFS, MMAP, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; NMFS Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits office; NMFS-PMRD, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99082.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Chief, Marine Mammal Division, Office of Protected Resources, 1315 East-West Hwy, Silver Spring, MD 20910 and Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Robyn Angliss, Office of Protected Resources, 301-713-2322; Douglas Beach, Northeast Region, 508-281-9254; Charles Oravetz, Southeast Region, 813-570-5301; James Lecky, Southwest Region, 310-980-4015; Brent Norberg, Northwest Region, 206-526-6140; Steven Zimmerman, Alaska Region, 907-586-7235.

**SUPPLEMENTARY INFORMATION:**

Publication of the LOF, which places all U.S. commercial fisheries into three categories based on their levels of incidental mortality and serious injury of marine mammals, is required by section 118 of the MMPA. Background information on the history of the LOF and a discussion of the fishery classification criteria are provided in the proposed LOF for 1997 (61 FR 37035, July 16, 1996). The fishery classification criteria are specified in the implementing regulations for section 118 of the MMPA (50 CFR part 229).

**Registration Requirements for Vessels Participating in Category I and II Fisheries**

Vessel or gear owners participating in Category I or II fisheries must register under the MMPA, as required by 50 CFR 229.4. Registration under the MMPA is administered by NMFS regional offices. Thus, the procedures and fees associated with registration differs between Regions. Under 50 CFR 229.4, the granting and administration of Authorization Certificates is to be integrated and coordinated with existing state and Federal fishery license, registration, or permit systems and related programs, whenever possible. Alternative registration programs have been or are being implemented in the Alaska Region, Northwest Region, and Northeast Region. Special procedures and instructions for registration in these Regions are provided in the next section (see Region-Specific Registration Requirements).

If the granting and administration of authorizations has not been integrated with state licensing, registration, or permitting systems, owners of vessels or gear must obtain registration packets from the NMFS Region in which their fishery operates. NMFS Regional Offices will endeavor to send these packets to known participants in Category I or II fisheries; however, it is the responsibility of fishers to ensure that these packets are obtained and submitted to NMFS at least 30 days in advance of fishing. The registration packet will typically include an MMAP registration form, a list of those fisheries in each region that require authorization in order to incidentally kill or injure marine mammals (Category I and II fisheries), and an explanation of the management regime, including instructions on reporting requirements. The registration packet may also include an explanation of the changes in the fishery classification criteria, guidance on deterring marine mammals, and a reminder that intentional lethal takes of marine mammals are no longer

permitted except under certain specific conditions.

Vessel owners must submit the registration form and a \$25 fee to the NMFS Regional Office in which their fishery operates. NMFS will send the vessel owner an Authorization Certificate, program decals, and reporting forms within 60 days of receiving the registration form and application fee.

If the granting and administration of authorizations under 50 CFR 229.4 is not integrated or coordinated with existing fishery licenses, registrations, or related programs, requests for registration forms and completed registration forms should be sent to the NMFS Regional Offices listed in this notice under **ADDRESSES**.

Procedures for registering in each NMFS region are outlined in the following section.

**Region-Specific Registration Requirements for Category I and II Fisheries**

*Alaska Region MMAP Registration for 1997*

In 1997, registration in the MMAP for fishing vessels or set net permit holders participating in Alaska Category II fisheries will be integrated with the Alaska Department of Fish and Game (ADF&G) system for registering commercial vessels and permitting set net fishing. The information required for MMAP registration will be obtained by NMFS directly from ADF&G and will be automatically incorporated into the NMFS MMAP database. Vessel owners must indicate on their ADF&G vessel registration form which Category II fishery they intend to participate in during 1997. If a fishery is not indicated, the vessel will not be registered in the MMAP. Registered vessel owners and set net operators will then be sent an MMAP certificate for 1997, an MMAP decal, a program information sheet, marine mammal injury and mortality reporting forms, and a written statement to be signed and returned to NMFS indicating whether any marine mammals had been injured or killed during the vessel's commercial fishing operations in 1996. The vessel or set net MMAP certificate will not be considered valid until the statement indicating any injuries or mortalities to marine mammals during 1996 fishing operations is returned to NMFS. There will be no fee charged for MMAP registration for 1997.

*Northwest Region (NWR) MMAP Registration for 1997*

In the Northwest Region, the States of Washington and Oregon have agreed to continue their assistance in issuing Authorization Certificates for Category I and II fishers as part of the fishing license renewal process. There will be no additional charge to the fishers for this service, and the registration instructions will remain the same for 1997 as they were in 1996.

*Southwest Region (SWR) MMAP Registration for 1997*

SWR is in the process of integrating MMAP registration for Category I and II fisheries that occur in California with the California Department of Fish and Game's commercial fishery permit registration program. However, this integration will not be completed before 1998. For this reason, Category I and II vessel owners in California will continue to register with SWR. In December 1996, vessel owners who engaged in a Category I or II fishery in 1996 will receive a registration packet in the mail. Any Category I or II vessel owner who has not received an application package by December 1, 1996, may request one from NMFS SWR (see **ADDRESSES**).

*Southeast Region (SER) MMAP Registration for 1997*

SER is in the process of integrating MMAP registration for Category I and II fisheries that occur in the southeast U.S. Atlantic Ocean with existing fishery registration programs. However, this integration will not be completed before 1998.

The only state fisheries in Category I or II that are under SER jurisdiction occur in North Carolina. State fishers in North Carolina should expect to receive a registration packet in the mail. If a fisher plans to participate in any state or Federal fishery in Category I or II and a registration packet is not received, fishers should contact SER (see **ADDRESSES**).

*Northeast Region (NER) MMAP Registration for 1997*

NER is integrating MMAP registration with state and Federal permitting processes for the following fisheries: Gulf of Maine, U.S. mid-Atlantic lobster fishery, Atlantic squid, mackerel, butterfish trawl, and the New England multispecies sink gillnet fishery (including but not limited to species as defined in the Northeast Multispecies Fishery Management Plan, dogfish, and monkfish). The Category I sink gillnet fishery includes regulated and non-regulated fisheries. Participants in the

federally regulated segment, the multispecies sink gillnet fishery, will be registered in the MMAP automatically through integration with the Federal permit process. Fishers who do not hold a Federal multispecies sink gillnet permit and who fish with sink gillnet for non-regulated species (dogfish and monkfish) are required to submit an MMAP registration form and processing fee to NMFS.

Federally permitted participants in the squid, mackerel, butterfish trawl fishery will be registered in the MMAP automatically through integration with the Federal permit process. Fishers who do not hold a Federal squid, mackerel, butterfish trawl permit and who trawl for those species are required to submit an MMAP registration form and processing fee to NMFS.

State and Federally permitted participants in the lobster trap/pot fishery will be registered in the MMAP automatically through integration with other permitting processes. The integrated registration process is expected to be completed prior to the effective date of this final rule. NMFS expects to issue information packages to permitted fishers by March 1, 1997.

For all participants in fisheries for which NMFS has integrated registration with permitting processes, the requirements to submit a registration form and fee and to post an MMAP decal on the vessel will be waived in 1997. A general certificate will be issued and will only be valid if presented with a valid state or Federal fishing permit.

All fishers who plan to participate in any other Category I and II fisheries in the NER must register under the MMAP by submitting a registration or renewal form and the processing fee to NMFS.

**Reporting:** Vessel owners or operators, or fishers (in the case of non-vessel fisheries), in Category I, II, or III, fisheries must comply with 50 CFR 229.6 and report all incidental mortality and injury of marine mammals during the course of commercial fishing operations to NMFS Headquarters or appropriate NMFS Regional Office. "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 may be required, upon request, to accommodate an observer aboard their vessels. Observer requirements may be found at 50 CFR 229.7.

## Responses to Comments

NMFS received 15 comments on the proposed LOF. Many comments were lengthy and raised many points of concern. Key issues and concerns are summarized and responded to as follows:

### General Comments

**Comment 1:** Timely data flow from the regional Fishery Science Centers is important. In some cases, incidental take data are 2 or more years behind. In addition, NMFS should focus on developing updated stock assessments along with revised Potential Biological Removal (PBR) levels. Failure to provide timely information on mortality or abundance can result in incorrect categorization of fisheries and unnecessary risk to marine mammal populations.

**Response:** NMFS agrees that the LOF should strive to classify commercial fisheries based on the best scientific data available and that NMFS should provide, when possible, updated mortality and serious injury estimates and updated PBR levels for each LOF.

Estimates of incidental mortality and serious injury that are based on observer data and used in the LOF are typically 2 years old. For instance, the proposed LOF for 1998, which will be developed in early 1997, will be based on mortality and serious injury estimates from 1996. This data lag is unavoidable because of the time required for entry and analysis of observer data and the time required to propose and finalize a new LOF. NMFS is aware that some estimates of mortality and serious injury of marine mammals in observed fisheries are more than 2 years old, will continue to work towards improving both the estimates and the timeline in which they are provided.

New draft Stock Assessment Reports (SARs), which include revised estimates of stock-specific and fishery-specific mortality and serious injury, and revised abundance estimates and associated PBR levels, are expected to be made available to the public in the near future. If final SARs are not available when the proposed LOF for 1998 is developed, NMFS will base the proposed LOF for 1998 on the information provided in the draft SARs.

**Comment 2:** Several commenters believed that the reclassification of a fishery from Category III to either Category II or I in the LOF would automatically result in the implementation of an observer program for that fishery.

**Response:** The final regulations implementing section 118 of the MMPA

require that vessels in fisheries classified in Category I or II to provide accommodations for observers if requested by NMFS (50 CFR 229.7(b)). Neither the regulations nor the MMPA require that NMFS place observers on all vessels participating in all fisheries classified in Category I or II. While information collected by observers aboard vessels usually provides the most accurate description of the level of serious injury and mortality to marine mammals incidental to commercial fishing operations, monitoring of commercial fishing operations may also be accomplished via alternative monitoring programs.

**Comment 3:** Annual reporting requirements need to be more specific about the condition of live marine mammal releases. NMFS needs to gather detailed information on "released unharmed," "injury," "serious injury," or "incidental mortality." A simple check box with "yes" or "no" to the question of killed or injured will continue to create problems with NMFS' assessment of the estimated level of "serious injury and/or incidental mortality" with any accuracy. NMFS has yet to determine what distinguishes an injury from a serious injury and how it relates to survivability of released marine mammals. Both NMFS and Congress acknowledge that encounters with marine mammals do not always result in "injury", "serious injury", or "incidental mortality".

**Response:** As stated by the commenter, NMFS recognizes that not all accidental encounters between commercial fishing vessels or gear and marine mammals result in injuries, serious injuries, or mortalities.

NMFS has provided considerable guidance as to what constitutes an injury, because fishers must be provided with criteria in order to determine whether an incidental interaction with a marine mammal constitutes an injury and whether a report of interaction needs to be submitted to NMFS. An injury is defined in 50 CFR 229.2 as

\* \* \* a wound or other physical harm. Signs of injury to a marine mammal include, but are not limited to, visible blood flow, loss of or damage to an appendage or jaw, inability to use one or more appendages, asymmetry in the shape of the body or body position, noticeable swelling or hemorrhage, laceration, puncture or rupture of eyeball, listless appearance or inability to defend itself, inability to swim or dive upon release from fishing gear, or signs of equilibrium imbalance. Any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body will be considered injured regardless of the absence of any wound or other evidence of an injury.

The definition of serious injury is more general. It is recognized that not all incidental injuries to marine mammals are serious or are likely to result in a mortality. Serious injury is defined in 50 CFR 229.2 as "any injury that will likely result in mortality."

NMFS anticipates that the types of injuries that constitute serious injuries may be species-specific and fishery-specific. Interim guidelines were developed by the Northeast Region in order to address the serious injury and mortality of large whales incidental to the lobster pot fishery. The response to comment 19 describes these interim guidelines. National guidelines for determining which injuries should be considered serious and likely to result in mortality will be developed by NMFS in 1997 and will be made available for public comment.

*Comment 4:* Observers should be placed on vessels when NMFS has questions about the level of serious injury and/or incidental mortality in a particular fishery. Current fishery designations do not reflect the realities of fishery interactions; they only reflect what fisheries NMFS has chosen to concentrate on observing thus far.

*Response:* The classification of commercial fisheries in the LOF is based on current information on the level of serious injury and mortality of marine mammals incidental to commercial fisheries. NMFS disagrees that current fishery designations only reflect what fisheries NMFS has observed to date. There are several fisheries whose classification in Category II has been justified by using something other than observer data, such as the Southeast Alaska salmon purse seine fishery, the North Carolina stop net fishery, and the mid-Atlantic coastal gillnet fishery.

*Comment 5:* Time should be spent in the productive capacity of research and development for a technological solution in the areas of documented take.

*Response:* NMFS agrees. Each year, NMFS allocates funding to improve gear technology in order to reduce serious injuries and mortalities of protected species.

*Comment 6:* A Category I listing focuses considerable attention on the fishery and gear types in question. This attention translates into regulatory and legislative action to mandate nontrivial measures to reduce or eliminate the risk to the endangered species in question. Such attention and actions should be commensurate with the demonstrated real risk, so that unwarranted costs and hardships are not imposed on people

and businesses that have no impact on the whales.

*Response:* Fisheries placed in Category I in the LOF are those that have been determined to have frequent incidental serious injuries and mortalities of marine mammals. Because the fishery classification criteria are defined relative to a stock's PBR level and because the PBR level for some marine mammal stocks, particularly endangered marine mammal stocks, are very low, some commercial fisheries that incur a few (i.e., 1 to 5) serious injuries or mortalities of these marine mammals, will be classified in Category I.

The LOF itself does not impose changes in fishery management that impact commercial fishers. Generally, reduction of serious injuries and mortalities incidental to commercial fisheries will be addressed by the Take Reduction Team (TRT) process. The MMPA requires that NMFS convene TRTs that include representatives of all impacted constituents. These Teams develop Take Reduction Plans (TRPs) which have the short-term objective of reducing serious injury and mortality levels to the PBR levels of the involved stocks, and the long-term objective of reducing serious injury and mortality levels to the Zero Mortality Rate Goal. Proposed regulations resulting from TRPs will be published in the Federal Register, and comments on the methods that NMFS proposes to use to reduce interactions between marine mammals and commercial fisheries will be solicited at that time.

*Comment 7:* For practical purposes, Congress apparently intended Category I to indicate a frequent incidence of serious injury and mortality. However, in a sleight of language that makes citizens so wary of their government, the definition of "frequent" makes it possible to call something "frequent" that any practical person would call remote.

*Response:* Pursuant to the MMPA, Category I, II, and III fisheries are those that incur frequent, occasional, or have a remote likelihood of incidental serious injuries and mortalities of marine mammals, respectively. Congress did not provide a definition of "frequent," "occasional," or "remote likelihood" in the MMPA. The final regulations implementing section 118 defined Category I, II, and III fisheries and thereby defined "frequent," "occasional," and "remote likelihood" based on the number of marine mammals seriously injured or killed incidental to commercial fishing operations relative to the marine mammal stock's PBR level.

NMFS' fishery classification criteria allow the agency to consider the level of serious injury and mortality incidental to commercial fishing on a stock-specific basis using a "weakest stock" approach. The population level and status of each marine mammal stock is specific to that stock. Thus, the level of impact each marine mammal population can withstand while allowing the population to attain its optimum sustainable population (OSP) level is also stock-specific. For instance, because the estimated minimum population size of North Atlantic right whales is 295 animals, the number of animals that can be removed from the population by commercial fishing while allowing the population to attain OSP is 0.4. In contrast, because the minimum population size of the Oregon/Washington coastal stock of harbor seals is 28,322, the number of animals that can be removed from this population by commercial fishing while allowing the population to attain OSP is 1,699. Thus, a small take of right whales (under 1 per year) would have a significant negative effect on the population, while a similar level of take of the Oregon/Washington stock of harbor seals would not. NMFS' chosen approach to the classification criteria allows it to focus management actions where fishery interactions have a significant negative effect on a marine mammal population.

*Comment 8:* If the MMPA programs succeed in protecting marine mammals, their numbers will increase, and logically, so will fishery interactions with them. It is not only possible, but virtually guaranteed, that no matter what commercial fishermen do to minimize interactions, they will interact with more and more animals until an active deterrent is in general use.

*Response:* The fishery classification criteria in the final regulations implementing section 118 are defined relative to a marine mammal stock's PBR level. Thus, if the population of a particular stock of marine mammal increases, the PBR level would be expected to increase as well. Consequently, commercial fisheries could anticipate that a higher number of incidental serious injuries and mortalities could be authorized, provided that the level relative to the PBR level remains constant or decreases.

*Comment 9:* It appears that marine mammal takes by fishermen of other countries fishing in proximity to the concerned stocks will be considered as "uncontrollable mortality" and will come "off the top" before NMFS sets the PBR level.

*Response:* The calculation of a PBR level for transboundary marine mammal stocks was considered on a case-by-case basis. General guidelines for migratory and non-migratory stocks were developed but were not applied in those instances where the guidelines were inconsistent with what is known about the biology of the marine mammal stock of concern. For migratory stocks, PBR level calculations are generally based upon the portion of the stock found in waters under U.S. jurisdiction or the proportion of the year that a migratory stock spends in waters under U.S. jurisdiction, and mortalities from foreign fisheries were generally included in the estimate of total mortality but not in the estimate of mortality incidental to U.S. fishing operations. For non-migratory stocks, the PBR level was calculated based on the abundance estimate of the stock residing in U.S. territorial waters and the Exclusive Economic Zone (EEZ). Restricting PBR level calculations in such a manner was considered appropriate because NMFS can only regulate incidental mortality and serious injury with respect to fishing activities under U.S. jurisdiction. Mortality and serious injury incidental to foreign fishing operations outside the U.S. EEZ generally do not affect the status of the stock (strategic vs. non-strategic) and are not included in the estimate of fishing mortality; thus, incidental takes of marine mammals by foreign fishing vessels should not affect the classification of U.S. commercial fisheries and will not affect the ability of U.S. commercial fishers to compete with foreign fishers.

#### *Comments on Fisheries in the Northeast Region*

##### Comments on the Gulf of Maine Mackerel Trawl Fishery

*Comment 10:* The commenter questioned NMFS' allegation that significant effort is not expected in the Gulf of Maine mackerel trawl fishery. As fisheries are coming under effort restrictions for groundfish in the Gulf of Maine, more effort is likely in herring and mackerel fisheries, as these stocks are more abundant. Although this fishery may not merit a separate listing from the combined trawl fishery for squid, mackerel, and butterfish, attention needs to be paid to the likely increase in effort.

*Response:* Since a new listing for the Atlantic squid, mackerel, and butterfish trawl was created in the 1996 LOF, the listing for the Gulf of Maine mackerel trawl fishery is duplicative and has been deleted in the 1997 LOF. The squid,

mackerel, butterfish trawl fishery is retained in Category II in the 1997 LOF. NMFS anticipates that additional information on effort in this fishery will be available from fishing vessel and dealer logbooks. NMFS agrees that there is potential for expansion of the mackerel trawl fishery since the stock is currently considered underexploited. However, because the economic viability of this fishery is uncertain, effort may not increase appreciably in the near future.

Fishers who hold a Federal permit for the squid, mackerel, butterfish fishery will be registered automatically under the new integrated registration system. Fishers who participate in the state component of this fishery must obtain registration materials from NMFS and must submit the completed registration and a \$25 fee to be authorized under the MMPA (see instructions under Registration).

##### Comments on the Finfish Aquaculture Fishery

*Comment 11:* Harbor seals should be added as interacting with the Finfish Aquaculture Fishery.

*Response:* The addition of harbor seals as an interacting stock is due to the entanglement of harbor seals in aquaculture pens. NMFS has no further information to indicate any marine mammal stocks other than harbor seals interacting with this fishery during the 1990–1994 period.

##### Offshore Monkfish Bottom Gillnet Fishery

*Comment 12:* The offshore monkfish bottom gillnet fishery should be divided into components of the Northeast Multispecies sink gillnet fishery and the U.S. Mid-Atlantic coastal gillnet fishery.

*Response:* NMFS agrees. This change will impact several vessels that were using sink gillnet gear but were not required to be permitted under the Multispecies Fishery Management Plan (FMP) because they were targeting monkfish and/or dogfish, which are not currently included under the Multispecies FMP. Monkfish was listed as a target species in the 1996 LOF for the Northeast Multispecies sink gillnet fishery but not for the Mid-Atlantic gillnet fishery. Fishers who hold a Federal permit for the multispecies sink gillnet fishery will be registered automatically under the new integrated registration system. Fishers who target only monkfish and do not have a Federal multispecies permit must obtain registration materials from NMFS and must submit the completed registration and a \$25 fee to be authorized under the

MMPA (see instructions under Registration).

*Comment 13:* It was not reflected in the proposed LOF that any interactions between the offshore monkfish bottom gillnet fishery and marine mammals were recorded in the course of observation from the observer program, nor were anecdotal reports provided. Why is the monkfish bottom gillnet fishery being subjected to the requirements of the MMPA? If there have been reports of interactions with marine mammals in the course of the fishing operations of the sink gillnet dogfish and monkfish fisheries, then these reports should be presented in the Federal Register as sufficient to classify them as the proposed rule states. Without that documentation, this fishery is being classified for unjust and unsound scientific reasoning until such fact and proof come forward.

*Response:* NMFS recognizes that quantitative information was not provided in the proposed LOF in support of the combination of the offshore monkfish bottom gillnet fishery with the New England multispecies sink gillnet fishery in Category I or with the U.S. mid-Atlantic coastal gillnet fishery in Category II, depending on the geographic location in which the fisher operates. As indicated in the proposed LOF, the offshore monkfish bottom gillnet fishery should be combined with the New England multispecies sink gillnet fishery or the U.S. mid-Atlantic coastal gillnet fishery, primarily because the offshore monkfish gillnet fishery uses tied-down sink gillnet gear, which is similar to the gear type used for flounder in the multispecies fishery, and thus, is an extension of current fisheries already in existence and is not a separate fishery. Vessels occasionally set strings of nets for monkfish in the same area and on the same trip as strings of nets set for groundfish. Thus, because the gear is similar, there is no practical distinction between the fisheries.

##### Comments on the Classification of the Lobster Pot Fishery

*A. Comments regarding the data used to classify the fishery.*

*Comment 14:* What is the definition of "serious injury" as it pertains to the lobster pot fishery classification and who determines whether the injury was serious?

*Response:* See response to comment 3 regarding the definitions of "injury" and "serious injury" under 50 CFR 229.2.

National guidelines for determining what constitutes a serious injury have not been established. The Atlantic Scientific Review Group (SRG), which

advises the agency on the science used by NMFS to manage marine mammals in the Atlantic Ocean, recommended that all instances where marine mammals are released alive from fishing gear be considered serious injuries until documentation to the contrary has been produced.

In the absence of national guidelines and because interim criteria for serious injury were urgently needed to address the impact of the lobster pot fishery to right and humpback whales, the Northeast Region utilized interim criteria for determining what constitutes a serious injury to large whales. The criteria developed by the Northeast Region and used in the classification of the lobster fishery were not as conservative as the Atlantic SRG has recommended.

According to the definition of injury, animals entangled in fishing gear, or released with gear trailing, are considered injured. For the analysis of the level of impact incidental to the lobster pot fishery, an injury was considered serious if it met any of the following criteria: (a) Entanglement did or could interfere with feeding (e.g., cinching loop around snout or gear through baleen); (b) entanglement did or could interfere with mobility (e.g., whale anchored, flippers pinned, flukes weighed down, gear apparently preventing whale from getting to the surface to breathe); or (c) entanglement resulted in substantial wounds (e.g., deep cuts, tendon/ligament or bone damage), that may result in loss of appendages or debilitating infection. A secondary consideration used in the analysis was whether the growth of a juvenile animal could cause further injury by a cinching entanglement on any part of its body as it increased in size.

In some cases, records of serious injury entanglements used for this analysis described whales which were disentangled. In cases of significant entanglements, the injuries were considered serious unless NMFS could confirm with reliable information that the whale was completely freed of gear,

and that the whale did not incur residual serious injuries.

If necessary, these guidelines will be changed to ensure consistency with the national guidelines.

*Comment 15:* The lobster fishery was placed in Category I because of one entanglement of a right whale in 26 years. Because this constitutes a rare interaction, it is inappropriate to place this fishery in Category I.

*Response:* NMFS disagrees that the interaction between northern right whales and the lobster pot fishery should be considered rare. The lobster fishery was placed in Category I in the proposed LOF based on 1 serious injury or mortality of a northern right whale in 5 years. This animal was first seen entangled in lobster gear on December 21, 1993, and stranded dead in July of 1995. In addition, since the publication of the proposed LOF, NMFS identified a second record (July 9, 1993) as a serious injury of a right whale in lobster pot gear. Thus, the placement of the lobster pot fishery in Category I in this final LOF is based on two mortalities or serious injuries of right whales, one that was first seen on 12/21/93 and a second that was first seen on 7/9/93 (see Table 1).

NMFS considered only data from 1990 to 1994 in this analysis. NMFS used 21 records of serious injury and mortality incidental to the lobster fishery for this analysis (see Table 1). Of the records NMFS considered suitable for this analysis, lobster pot gear was responsible for the serious injury or mortality of two right whales, 9 humpback whales, and 7 minke whales. In addition, NMFS has records of two additional humpback whales and one minke whale that could be seriously injured; these records are currently under evaluation. NMFS also has records of 25 other whale entanglements collected between 1990 and 1994 that were excluded from this analysis due to insufficient information on gear type, species identification, or degree of injury. It is likely that some percentage of those entanglements represent serious injury and/or mortality due to entanglement in lobster gear.

NMFS is using opportunistic data to classify the lobster pot fishery. Opportunistic reports provided by sources such as NMFS, the New England Aquarium, and private citizens cannot be extrapolated to provide a total estimate of serious injury and mortality incidental to this fishery. The true level of incidental serious injury and mortality incidental to this fishery is unknown but may be higher than that reported here.

The total observed serious injury or mortality of right whales incidental to the lobster pot fishery for 1990 to 1994 is 0.4 animals per year; the PBR level for the northern right whale stock is 0.4 animals. Thus, because the total fishery-related incidental mortality and serious injury for all commercial fisheries is above 10 percent of the PBR level for this stock, and because the average take for the past 5 years is greater than or equal to 50 percent of the PBR level (2 animals in 5 years equals 0.4 animals per year; this is equivalent to the PBR level for this stock), placement in Category I is justified, based on impact to northern right whales.

In addition to the serious injury and mortality of northern right whales incidental to the lobster pot fishery, 11 humpback whales were seriously injured or killed by lobster pot gear between 1990 and 1994. This level of serious injury and mortality of humpback whales averages to 1.8 animals per year, which represents 19 percent of the PBR level for that stock (PBR level = 9.7). This level of incidental serious injury and mortality would justify placement of the lobster pot fishery in Category II. In addition to the records of serious injuries and mortalities of large whales in lobster gear used in this analysis, NMFS has data which show that large whale (right, humpback, minke) entanglement in U.S. lobster gear has occurred historically and has continued since 1994, which is the last year of data used in this analysis.

Refer to the response to comment 7 for a discussion of the stock-specific approach of the fishery classification criteria.

TABLE 1: NMFS RECORD OF SERIOUS INJURY AND/OR MORTALITY OF LARGE WHALES INCIDENTAL TO THE GULF OF MAINE, U.S. MID-ATLANTIC LOBSTER TRAP/POT FISHERY FOR 1990-1994\*

Date Sighted**	Species	Sighting Location	Description of gear and evidence of serious injury/mortality	Outcome***
7/9/93	North Atlantic right whale.	Georges Bank .....	Lobster buoy, warp, swivel plus swordfish driftnet; tail of juvenile cut 8" on both sides from lobster line; partially healed and re-cut by net; wrapped in net; partially disentangled 7/9 by driftnet fisher; remainder removed 8/7 by disentanglement team ; re-sighted 9/93 in NY in shallow water; presumed dead from entanglement injuries.	Serious injury.

TABLE 1: NMFS RECORD OF SERIOUS INJURY AND/OR MORTALITY OF LARGE WHALES INCIDENTAL TO THE GULF OF MAINE, U.S. MID-ATLANTIC LOBSTER TRAP/POT FISHERY FOR 1990-1994\*—Continued

Date Sighted**	Species	Sighting Location	Description of gear and evidence of serious injury/mortality	Outcome***
12/21/93	North Atlantic right whale.	Georgia .....	Lobster trap trawl rig (line with secondary lines spliced in perpendicularly); mostly floating poly line, also sinking poly/dacron line w/wooden toggle; green poly groundline imbedded 3" into bone at right flipper insertion & through baleen; 6-8 wraps around flipper; dark warp on back; juvenile; stranded dead 7/95 in RI.	Serious injury.
4/10/90	Humpback whale ....	Massachusetts .....	Lobster gear; fisher observed free-swimming whale dragging hundreds of yards of gear and cut most off.	Injury+.
6/18/90	Humpback whale ....	Massachusetts .....	Flipper of free-swimming whale entangled in lobster warp; trailing blue and orange float; may have had line through mouth.	Serious injury.
7/4/90	Humpback whale ....	New Hampshire .....	Lobster line & orange buoy; whale may have shaken some of the pots; juvenile; last seen trailing buoy.	Serious injury.
8/1/91	Humpback whale ....	Massachusetts .....	Gillnet, lobster (including pot) & tuna gear, grappling hook; trailing 50' of netting; gear around mouth & tail; emaciated & tired; could not swim with tail; freed 8/11/91 by disentanglement team; juvenile; in bad shape; sighted over next week swimming slowly.	Serious injury.
8/24/91	Humpback whale ....	New York .....	Lobster trap trawl rig; at least 12 pots & 2 high-flyers; lobster line over flipper and fluke.; swimming impaired/atypical; distressed/labored breathing; mostly stayed just below surface; heading toward land; juvenile animal; disentangled.	Serious injury.
10/3/91	Humpback whale ....	Massachusetts .....	Lobster trap trawl w/2 buoys; line tight around tail; free-swimming; not in immediate danger but close to shore; cut free by local lobsterman (not his gear) & headed out to sea; unknown whether trailing gear; juvenile.	Injury+.
4/22/93	Humpback whale ....	New Hampshire .....	Lobster line around tail stock & flukes; whale thin; unknown if gear trailing; probably same whale freed by disentanglement team on 4/24/93; thin and weak; some healing around line; juvenile animal.	Serious injury.
6/13/93	Humpback whale ....	New Hampshire .....	Pot warp wrapped around flippers & body; some bleeding on right; line trailing; calf of the year; fresh wounds.	Serious injury.
8/11/93	Humpback whale ....	Maine .....	Lobster & sink gillnet; reported by lobsterman; gear over back & through mouth; anchored; partially disentangled by diver; left gear through mouth at hinge; whale swam away; juvenile animal.	Serious injury.
8/19/93	Humpback whale ....	Maine .....	Lobster gear in mouth & around tail stock; semi-anchored; labored breathing/wheezing.	Serious injury.
8/11/94	Humpback whale ....	Maine .....	Probable single trap lobster gear wrapped around or draped over flipper; heavy density of pots in area; at least partially disentangled by lobsterman (not his gear).	Serious injury.
6/25/90	Minke whale .....	Maine .....	Lobster gear around tail stock; line around pectoral fins and in mouth; stranded alive as a result of entanglement injuries; old entanglement; emaciated; heavy barnacle load; lesions; tail deformed; juvenile.	Serious injury.
8/16/90	Minke whale .....	Massachusetts .....	Trailing lobster gear; looked bad .....	Injury+.
8/28/91	Minke whale .....	Maine .....	Lobster trap lines through mouth and around tail; lobsterman found dead whale in his gear; juvenile animal.	Mortality.
10/23/91	Minke whale .....	New Hampshire .....	Juvenile whale held in place by multiple lines leading to lobster trap trawls; partially disentangled.	Serious injury.
8/22/92	Minke whale .....	Maine .....	Juvenile whale found floating dead; wrapped in lobster gear ...	Mortality.
9/21/92	Minke whale .....	Maine .....	Line from lobster gear strapping mouth shut .....	Mortality.
9/3/93	Minke whale .....	New Hampshire .....	Net and lobster gear around tail and trailing; labored/struggling	Serious injury.
7/2/94	Minke whale .....	Maine .....	Lobster lines (3 pair traps involved); line through mouth; one line around lower jaw; chafing on tail; whale brought up dead with traps.	Mortality.

\* In addition to these 21 reports, NMFS also received 25 records of large whale entanglement for the 1990-1994 period that were excluded from this analysis due to insufficient information on degree of injury, gear type, or species identification. It is likely that some percentage of these entanglement records represent serious injury or mortality due to lobster gear. The 25 records that were excluded include right, humpback, minke, fin, and unidentified whales.

\*\* The date sighted and location provided in the table are not necessarily when or where the serious injury or mortality occurred; rather, this information indicates when and where the whale was first seen entangled in the gear that ultimately resulted in serious injury or death to the animal. Recent records indicate that the difference between these two points can be substantial for both time and location.

\*\*\* See response to comment 19 for a description of the guidelines used to determine what constituted a serious injury with respect to large whale takes in this fishery.

+ This injury may constitute a serious injury. NMFS is evaluating these records to determine the extent of the injury and whether it should be considered a serious injury.

*Comment 16:* The commenter included a list of entanglements and indicated that it is inappropriate to propose to reclassify the lobster pot fishery based on the one right whale entanglement because the gear cannot be traced to the lobster fishery. The gear recovered from the animal in question was identified as "unidentified line".

*Response:* The list to which the commenter refers was a draft list that was not prepared by NMFS. Information provided to NMFS by public commenters is very helpful but cannot be used to justify the placement of a fishery in a specific category in the LOF until the information has received scrutiny and approval by NMFS scientific, management, and headquarters staff.

The whale that the commenter refers to was sighted on December 21, 1993, off Georgia. When the gear was first removed from the whale, it was described as lobster gear, although it consisted only of line and a wooden toggle. When the gear was transferred to and examined by NMFS, this initial assessment was confirmed based on the type of line and arrangement of knots and splices. Since the publication of the proposed LOF, the gear has been examined and the assessment confirmed by a lobster industry representative. Consequently, the final reclassification of the lobster fishery into Category I is based on two serious injuries or mortalities of northern right whales. As previously stated, if no right whales had been seriously injured or killed, a classification in Category II would be justified based on the 9 serious injuries or mortalities of humpback whales and 6 serious injuries or mortalities of minke whales.

*Comment 17:* The commenter questions the statistical validity of the calculations by which the conclusion was reached that the lobster fishery exceeded the threshold limits for Category I. Because of the small numbers involved, a statistically valid analysis would indicate that there is a very high probability that the lobster fishery does not exceed the threshold for Category I.

*Response:* A statistical analysis of this data is not necessary, because the reported serious injury and mortality of two right whales in 5 years (1990–1994) results in a minimum average annual level of serious injury and mortality of 0.4 per year ( $2/5 = 0.4$ ). Fisheries placed in Category I are those that have incidental serious injury and mortality of a particular stock of marine mammals that is greater than or equal to 50 percent of the PBR level for that stock. In the case of right whales, PBR level =

0.4, so 50 percent of the right whale PBR level = 0.2. Because two serious injuries or mortalities of right whales were reported in this fishery during 5 years, the minimum serious injury/mortality level of 0.4 right whales per year qualifies the lobster fishery as a Category I fishery.

*Comment 18:* The commenter indicated that it was inappropriate to classify the New England lobster pot fishery based on the recovery of pot gear from a right whale in waters off Georgia.

*Response:* Although the entangled right whale was first sighted swimming off Georgia, the initial location of entanglement cannot be determined. The whale was identified as an individual that, in addition to using the calving grounds off Georgia and Florida, has also been seen in Cape Cod Bay and in the Bay of Fundy. Whales have been known to swim great distances trailing gear.

*Comment 19:* NMFS was very conservative in its use of entanglement reports and this may result in an underestimate of the entanglement rate.

*Response:* NMFS agrees that the rate of annual serious injury and mortality determined through stranding and other reports probably underestimates the total level of serious injury and mortality that occurs incidental to this fishery. NMFS uses stranding and other reports to provide a minimum rate of serious injury and mortality incidental to particular commercial fisheries. This minimum rate cannot be extrapolated to a total estimate of annual serious injury and mortality.

*Comment 20:* Given the size of the lobster pot fishery and the very few reports of any interaction with whales over a twenty-six year period, logic would dictate that the lobster fishery is best described as having a remote likelihood of interaction. In reality, given all the lines that have always been present in the water for all these years, and the total lack of any significant interaction with whales, we believe the lobster fishery has been a very friendly neighbor to the whales.

*Response:* See response to Comment 15.

*Comment 21:* Most experts on whales do not believe that the lobster fishery merits a Category I designation. While some may voice concern with regard to vertical buoy lines going to the surface, they admit that the entanglement possibility is a rare occurrence. They also cannot explain how a whale can get entangled in such line.

*Response:* See response to comment 15.

*Comment 22:* Whale watch boat captains report that they have seen

schools of whales "feeding" and "frolicking" among buoy lines and have never seen one become entangled.

*Response:* NMFS appreciates the reports that are received from whale watch boat captains, as they may provide information on relative seasonal distribution of the animals. The observation provided by the commenter documents that whales are known to use areas where lobster gear is fished. However, few of the entanglements that eventually lead to serious injury or mortality are observed at the time of initial occurrence. Many of the sightings of entangled whales either anchored in or trailing gear come from whale watch vessels, and these reports are valuable to NMFS.

See response to Comment 15 for additional discussion.

*Comment 23:* The elevation of the lobster pot fishery to Category I is supported by the information on large whale entanglements.

*Response:* NMFS agrees.

*B. Comments Regarding the Combination of the Inshore and Offshore Lobster Trap/Pot Fisheries, the Description of the Lobster Trap/Pot Fishery and the Overlap with Documented Ranges of Marine Mammals.*

*Comment 24:* The breadth and scope of the range of the lobster pot fishery is neither documented nor described in sufficient detail so as to distinguish the area of the fishery most likely to have interactions with the marine mammals of concern. Without this distinction, there is great assumption without sufficient scientific support to lump all participants and areas involved in this fishery into Category I.

*Response:* In a future LOF, NMFS may investigate whether it is possible to separate certain geographic segments of the lobster fishery relative to potential for whale entanglement. Data are not currently available to conduct this analysis. Most of the quantitative distribution surveys concentrate on shelf-edge rather than nearshore waters. Some qualitative sighting data are available in addition to historic records from whaling stations. NMFS' strategy for separating geographic segments of the lobster fishery would involve conducting an analysis of information on whether marine mammals known to become entangled in lobster gear occur in waters where and when the fishery occurs and then attempting to determine whether the rate of occurrence is sufficiently low to reduce the probability of entanglement. Many of the whale entanglements in lobster gear involve juvenile animals. Juvenile whales tend to explore inshore areas



and have been known to swim up into rivers (e.g., Delaware, Susquehanna, and Potomac Rivers). Humpback whales, in particular, have often been sighted feeding very close to shore and inside harbors.

*Comment 25:* A tremendously large portion of the fishery operates in near shore, shallow waters, inside the documented range of the marine mammals mentioned in the Federal Register notice, making this an absurd and unnecessary administrative burden on these fishermen with registration requirements.

*Response:* See response to comment 24.

*Comment 26:* The inshore and offshore components should be combined into a single fishery. The differences in gear that is used in the inshore and offshore fishery for lobster is neither significant enough to affect the potential to kill or seriously injure marine mammals, nor is the marine mammal distribution such that either inshore or offshore gear has a greater likelihood of entangling marine mammals.

*Response:* The relative potential for serious injury or mortality of marine mammals in various types of lobster gear is unknown. Very little information is available that describes the behavior of the whales which resulted in entanglement, particularly for those entanglements that occur at depth. It may be possible to separate out certain fisheries that occur in bays or sounds if it can be determined that marine mammal species that are known to become entangled in lobster gear do not occur in those areas. However, that information is not available at this time. See response to Comment 25 for additional discussion.

*Comment 27:* The proposed LOF indicated that the decision to combine the inshore and offshore lobster pot fisheries is based on "new information received about the prosecution of the lobster fishery." Contrary to the implication in the Federal Register notice, the practical distinction between the offshore and inshore lobster pot fisheries is not based on the distinction between state waters and the EEZ. The proposed LOF is erroneous in stating that the number of pots and number and size of associated lines and surface gear increase as distance from shore increases.

*Response:* The description in the proposed LOF was intended to refer to the number of traps fished in a string and the number of traps fished per vessel, not to the total number of traps fished inshore versus offshore. NMFS recognizes that the size of the fleet that

fishes a considerable distance from shore in the EEZ is much smaller than that which fishes closer to shore in the EEZ and in state waters.

*Comment 28:* Although there are no sharp or practical distinctions between the gear types and vessel sizes used in the inshore lobster pot fishery and the offshore lobster pot fishery, there are sharp geographic distinctions that can be made, particularly in coastal New Hampshire and Maine. Because there has been only one right whale sighting inside the 100m bathymetric contour (excluding Jeffreys Ledge), the available data support a classification of Category III for the lobster fishery that occurs in the State waters of New Hampshire and Maine. In addition, although there are right whale aggregations at the Great South Channel and Cape Cod Bay/Stellwagen Bank/Jeffreys Ledge and in the lower Bay of Fundy and Browns Bank on the Scotian Shelf, there are large areas of inshore lobster grounds in between where the data suggest that the risk of serious injury/mortality from entanglement in lobster gear is non-existent.

*Response:* NMFS disagrees with the commenter's interpretation of right whale distribution. More than one right whale has been sighted inside the 100m contour. Although concentrations of right whales apparently only exist in certain areas of the Gulf of Maine, the whales likely transit many of the other areas at some point while moving between concentration areas. Information from satellite tracking indicates whales may cover large distances over short periods of time. See response to Comments 24 and 26 for discussion of geographical separation of the lobster fishery. Absent the evidence of right whale serious injury and mortality, the evidence of humpback and minke whale mortality and serious injury from 1990–1994 in the areas of Maine and New Hampshire to which the commenter refers would support a Category II listing rather than Category III.

*Comment 29:* Due to its geographical location and fishing methods employed, a practical operational distinction separates Long Island Sound from other waters where the lobster fishery is prosecuted. To remain consistent with plans for a separate fishery management area in Long Island Sound, and because right whales, humpback whales, and minke whales do not occur in Long Island sound, the lobster pot fishery in Long Island Sound should be separated from the U.S. mid-Atlantic Inshore Lobster Trap/Pot fishery and identified as a separate fishery in Category III. It makes no sense to have inshore Long

Island Sound lobster pot fishermen from Connecticut or New York comply with the same registration requirements as imposed on lobstermen who actually fish in New England waters inhabited by endangered cetaceans. Specifically, lobstermen fishing exclusively in the waters of Long Island Sound west of a line running from Watch Hill, RI, to Orient Point, NY, should be excluded from the Category I designation.

*Response:* See response to Comments 24, 25, and 26. NMFS does not have good information on the extent to which whales use Long Island Sound. However, humpback, minke, right, and fin whales have been sighted inside the line mentioned by the commenter. Most sighting surveys conducted in the western U.S. Atlantic Ocean did not cover inshore waters such as Long Island Sound, Delaware Bay, and Chesapeake Bay; rather, effort was concentrated on the continental shelf. NMFS may consider a geographic separation of the lobster fishery in a future LOF.

*Comment 30:* The lobster pot fishery should be restricted in areas of New England where endangered whales feed and mate. Recategorizing the territory that the whales inhabit from Category III to Category I would be beneficial to the endangered types of whales. It is a tragedy when any of these whales are entangled in trap lines, and enough have died already.

*Response:* Reclassification of the lobster fishery will not result directly in additional protection for marine mammals. Any such measures will be developed utilizing other management measures such as the promulgation of regulations in order to implement the Large Whale TRP.

*C. Comments on the Use of Alternate Management Regimes and Monitoring Programs.*

*Comment 31:* Several commenters supported the use of monitoring systems, such as enhanced stranding and disentanglement network reporting, or additional gear marking requirements, in lieu of the implementation of an observer program for the lobster pot fishery. Other alternatives include the use of shipboard and aerial surveys to monitor fishing activity and whale distributions, particularly in critical habitat areas and known summer ranges in the northern Gulf of Maine. In addition, observer programs are unlikely to result in an increased understanding of interactions between marine mammals and lobster gear, as many entanglements may occur when the vessel is not present.

*Response:* NMFS agrees that alternatives to traditional observer

programs are likely to be more effective in monitoring marine mammal serious injuries or mortalities incidental to the lobster pot fishery. Such an alternative observer program is likely to include some of the components recommended, such as aerial surveillance, enhanced reporting of entanglements, etc. Although NMFS may schedule some low level of observer coverage in this fishery, the agency anticipates that several suggestions for alternative monitoring programs may be recommended by the Large Whale TRT. This Team, which consists of representatives of the Federal government, affected state governments, environmental groups, and the affected commercial fisheries, is charged with developing the Large Whale TRP by early 1997.

*Comment 32:* NMFS should develop an approach for monitoring serious injuries and mortalities of large whales in the lobster pot fishery which allows fishermen to become partners in the effort to protect this species, rather than victims in pursuit of what may be an unattainable goal.

*Response:* NMFS agrees. Representatives of the commercial lobster pot fishery currently participate in the Large Whale Take Reduction Team, which is charged with developing a plan that will reduce incidental serious injuries and mortalities of large whales. NMFS anticipates that many thoughtful, productive methods for addressing this issue will result from these meetings.

#### *D. Comments on Coordinating Registration Under the MMAP with Existing State or Federal Registration Systems.*

*Comment 33:* All lobstermen required to register under the MMPA (Category I and II) should be registered via an integration of state lobster licensing lists with NMFS MMPA registration requirements. If we allow our data processing systems managers to collaborate on this issue, we can avoid an enormous redundancy in applications for, and administration of, the required permits.

*Response:* NMFS agrees. Integration of registration under the MMPA with registration in existing Federal and state permitting systems greatly reduces the amount of paperwork that must be completed by the commercial fisher and handled by NMFS. Because of the reduced paperwork burden on NMFS, an integrated system often results in a reduction or elimination of the \$25 fee otherwise required for registration under the MMPA. The NER will endeavor to integrate the registration of

the commercial lobster pot fishers with state and Federal permitting systems.

*Comment 34:* Integration of registration with the state fishery registration system of Maine will be difficult, if not impossible, because licensing issues are controlled by the Legislature and coordination would require the passage of law, and because of the expense of registering 7,000 commercial lobster fishers.

*Response:* Integration of state registration systems with registration under the MMPA would not necessarily require that individual states change their licensing practices. NMFS will work closely with the states to develop an integrated registration program that causes the least impact to the state fishery management programs while ensuring that the legislative mandates of registration under the MMPA are fulfilled.

#### Comments on Other Fisheries

*Comment 35:* There has been a recent increase in effort in fishing for hagfish in the Gulf of Maine. This is a staked gear fishery that may bear monitoring for potential interactions with marine mammals.

*Response:* NMFS agrees that effort in the hagfish pot fishery has increased in New England waters and that the range of the fishery may overlap that of marine mammals known to become entangled in pot gear. Unlike the American eel fishery, the hagfish fishery in the Gulf of Maine primarily occurs in waters too deep for staked gear. The hagfish fishery uses gear that is rigged similar to lobster gear but uses barrels instead of pots. NMFS currently has no records of serious injuries or mortalities of marine mammals incidental to this fishery. NMFS expects to examine the locations and manner in which this fishery is prosecuted in order to determine whether the fishery should be proposed for reclassification based on analogy with the lobster pot fishery or other fisheries.

*Comment 36:* NMFS should pay additional attention to the proliferation of aquaculture permits in the Gulf of Maine, as some gear may pose an entanglement risk to marine mammals. For example, if top-down systems of shellfish aquaculture are used, they may pose the same types of entanglement risk that is posed by lobster gear. In addition, blue fin tuna grow-out activities should be monitored, as serious problems with entanglement of small cetaceans and pinnipeds have occurred in the deeper waters of Australia, where this technology is already in use.

*Response:* NMFS appreciates the information on the Australian tuna project. Federal bluefin tuna regulations do not currently authorize aquaculture or grow-out operations. Such activities may be conducted on a limited scale with a specific letter of authorization consistent with the Atlantic tuna regulations (50 CFR part 285) and the provisions of 50 CFR 600.745. U.S. Coast Guard and Army Corps of Engineers requirements also would apply. Depending on the scale and duration of the activity, an Environmental Assessment could be required, in which case the impacts on protected species would be assessed and public comment would be sought. The referenced pilot project is currently being examined in this regard.

*Comment 37:* The Atlantic Ocean, Caribbean, and Gulf of Mexico pelagic longline fisheries for swordfish, tuna, and sharks should be separated into three separate fisheries in the LOF. This action has been requested since 1991. Separation of the Atlantic longline fisheries would be consistent with NMFS' proposed action to separate the Oregon swordfish/blue shark surface longline fishery into the Oregon swordfish floating longline fishery and the Oregon blue shark floating longline fishery. In addition, separation of these fisheries by fishing region would facilitate establishing a standardized process for monitoring effort, estimating serious injury and incidental mortality rates, and evaluating the effectiveness of reduction methods.

*Response:* The proposed LOF for 1997 clearly indicates that the rationale for separating the two longline fisheries permitted by the state of Oregon is to remain consistent with changing state registration practices (see 61 FR 37035; especially 37038). This change was not proposed based on a change in the level of serious injury or mortality of marine mammals incidental to the fishery. NMFS will consider making changes to the LOF to parallel current state or federal fishery registration practices, as it greatly facilitates integration of state or federal fishery registration with registration in the MMAP.

At this time, there is no scientific or management reason to separate the Atlantic Ocean, Caribbean, and Gulf of Mexico pelagic longline fishery into separate fisheries in the LOF. The fishery is managed under the Atlantic Tunas Convention Act (ATCA) consistent with the recommendations of the International Committee for the Conservation of Atlantic Tunas (ICCAT), which has a very broad scope. This stems from the wide distribution of the target species in the pelagic longline

fishery, which migrate seasonally between the Northern U.S. Atlantic Ocean, the Caribbean, and the Gulf of Mexico. The marine mammals incidentally seriously injured and killed in this fishery are also found across all of these areas. Although some vessels operate on a more regional basis, the fishery typically follows the target species across these different regions. Because the fishery statistics are already collected on a regional basis, dividing the pelagic longline fishery into different segments would not alter the way in which effort and take data are monitored. The TRP involving this fishery does not affect the fishery in the Gulf or Caribbean, and observers are placed onboard these fisheries to monitor target species catch for the purposes of reporting to ICCAT, regardless of the fishery's classification under the MMPA. Therefore, maintaining this as one fishery does not place undue burden upon the fishery or undue "blame" for marine mammal takes in a regional area. Alternatively, if the fishery was divided into three separate fisheries, many fishers would have to register under two or three different fisheries.

*Comment 38:* The category designation of the Atlantic Ocean, Caribbean, and Gulf of Mexico pelagic longline fishery should be reassessed based on more accurate information. The current classification is based on pilot whale interactions which occur when the pilot whale preys upon dead tuna. If the reported number of hooks was used for calculating this estimate, NMFS must consider that a hook in the Gulf of Mexico and a similar hook at the Grand Banks have a very different likelihood of interacting with a particular marine mammal species.

*Response:* The estimated level of effort used in determining the total estimated serious injury and mortality of marine mammals incidental to this fishery is based on the number of sets (not hooks) and is the same data set used for estimating levels of catch for target species used by NMFS to report to ICCAT. Pilot whales and other species known to interact with this fishery occur in all areas where the fishery is prosecuted. For the purpose of the LOF, it is immaterial whether the serious injury or mortality occurred as a result of predation or attempted predation or if the serious injury or mortality occurred as a result of some other action on the part of the marine mammal. New information on the level of incidental serious injury and mortality in this fishery was not provided in the draft SARs for 1996, and thus information on the level of marine

mammal serious injury and mortality in the pelagic longline fishery is unlikely to be available for the development of the proposed LOF for 1998. Constituents interested in obtaining more recent information should provide public comments on the draft SARs for 1996.

*Comment 39:* The category III designation for the Gulf of Maine, U.S. Mid-Atlantic tuna, shark, and swordfish hook and line/harpoon fishery should be reevaluated. As NMFS noted in the proposed LOF, information may be available to confirm the type of gear that entangled a humpback whale near Jeffrey's Ledge in 1995. These sources of information should be investigated.

*Response:* NMFS may revisit the classification of this fishery in the proposed LOF for 1998. At that time, NMFS hopes to have additional documentation on several entanglement records and on which segments of this fishery present an entanglement risk to marine mammals. The record to which the commenter refers documents the entanglement of a humpback whale in a bait gillnet set for live bait to be used in the tuna hand line fishery. While this entanglement could be considered an injury, NMFS determined that the entanglement did not constitute a serious injury, as the buoy line was apparently draped over the whale's flipper rather than wrapped around it.

*Comment 40:* Several of the gillnet and trap fisheries are proposed to remain in Category III in the absence of data indicating interactions, despite the fact that all of these fisheries are using gear types known to interact with marine mammals in areas where the fishing effort overlaps with marine mammal species that are known to become entangled in those types of gear. Lack of observer coverage or the extremely slow pace of data flowing from the Northeast Fisheries Science Center should not become a bar to providing monitoring of these fisheries.

*Response:* NMFS has no new information on the level of serious injury and mortality of marine mammals incidental to the majority of these fisheries at this time. New information on the level of serious injuries and mortalities of marine mammals incidental to the U.S. mid-Atlantic coastal gillnet fishery and the North Carolina inshore gillnet fishery is likely to become available by June 1997. These data will be evaluated and used, if appropriate, to propose changes to the LOF for 1998.

NMFS will reevaluate other fisheries in a future proposed LOF as data become available.

#### *Comments on the Definitions of Various U.S. North Atlantic Trawl Fisheries*

*Comment 41:* While the divisions and category designations of the North Atlantic trawl fisheries are generally supported, because the Gulf of Maine, South Atlantic, and Gulf of Mexico Herring Trawl fishery may co-occur with pilot whales and may be interacting with harbor porpoise, this fishery may need to be considered for designation as a Category II fishery.

*Response:* The herring trawl fishery which is currently listed in Category III is a coastal herring trawl fishery. At this time, NMFS has no evidence indicating that marine mammals have been seriously injured or killed incidental to this fishery.

*Comment 42:* The estimated number of five vessels in the Gulf of Maine, South Atlantic, and Gulf of Mexico herring trawl fishery may not be correct, as there have been reports of a larger number of vessels fishing in the Jeffrey's Ledge area.

*Response:* No updates on the number of participants are available for this final LOF. NMFS will update the tabular listing of number of participants in each fishery and the list of marine mammal stocks involved for the proposed LOF for 1998.

#### *Comments on Fisheries in the Southwest Region*

*Comment 43:* Reclassification of the California squid purse seine fishery to Category II is supported based on the increase in fishing effort, the presence of pilot whales in the area, and historical evidence of serious injury and mortality in the fishery.

*Response:* NMFS agrees. The fishery has been placed in Category II.

#### *Justification for the Categorization of Commercial Fisheries*

The following are justifications for the final categorization of commercial fisheries into Category I, II, or III based on the classification scheme defined in the final rule implementing section 118 (60 FR 45086, August 30, 1995). Justifications are presented only for those fisheries addressed in the proposed LOF for 1997 (61 FR 37035, July 16, 1996).

#### *Commercial Fisheries in the Atlantic Ocean*

##### *U.S. Atlantic Tuna Purse Seine Fishery*

As discussed in the proposed LOF for 1996, humpback and minke whales have been encircled by tuna purse seines. However, the whales were released and did not incur injury or mortality. Thus, no changes in the

classification of this fishery were proposed. In 1996, NMFS observers recorded that eight marine mammals were encircled incidental to this fishery. All animals incidentally encircled were released alive and uninjured. Since NMFS observers have recorded the encirclement of marine mammals, NMFS will carefully monitor this fishery to determine why marine mammals are being encircled, and will propose that the fishery be reclassified if serious injuries or mortalities become a concern.

This listing replaces a listing for the bluefin tuna purse seine fishery, which had been inadvertently omitted, and is made more general to include additional target species such as yellowfin tuna.

#### Gulf of Maine Mackerel Trawl Fishery

This fishery is a Category III state fishery that uses similar gear to target the same species as targeted in the Atlantic squid, mackerel, and butterfish trawl fishery. A separate listing of the Gulf of Maine mackerel trawl fishery is duplicative of the Atlantic squid, mackerel, butterfish trawl listing and is hereby deleted from the LOF. Commercial fishers participating in the state fishery for mackerel should, therefore, register under the MMPA as a Category II fishery (see information under Registration).

#### Finfish Aquaculture Fishery

NMFS has received four reports of harbor seal serious injury and mortality incidental to this fishery between 1990–1994. These data result in an average of 0.8 mortalities of harbor seals per year. Although the actual level of serious injury and mortality in this fishery is unknown, the reported serious injury and mortality level is less than 1 percent of the PBR level for the harbor seal. Therefore, this fishery is retained in Category III. The harbor seal (Western North Atlantic stock) is hereby added as a species which incurs injury and/or mortality incidental to the finfish aquaculture fishery.

#### U.S. North Atlantic Coastal Gillnet Fisheries

The southernmost boundary of the Northeast multispecies sink gillnet fishery and the northernmost boundary of the Mid-Atlantic gillnet fishery are modified to be consistent with the Multispecies Fishery Management Plan (FMP). This boundary extends south from the southern shoreline of Long Island along 72° 30' W. Long. This change eliminates an overlap in the vicinity of Rhode Island and Martha's Vineyard.

#### Offshore Monkfish Bottom Gillnet

This fishery is divided geographically and placed with two other gillnet fisheries. The northern portion of the fishery is absorbed into the New England multispecies sink gillnet fishery in Category I and the southern portion with the Mid-Atlantic gillnet fishery in Category II. The monkfish fishery uses bottom gillnet gear that has been observed to cause mortality of marine mammals. In addition, several of the areas where bottom gillnet gear is used to target monkfish are known to be high-use areas for marine mammals.

#### Gulf of Maine, U.S. Mid-Atlantic Lobster Trap/Pot Fishery

Two records of serious injury or mortality of northern right whales, 7 records of serious injury and/or mortality of minke whales, and 10 records of serious injury and mortality of humpback whales were reported in this fishery from 1990–1994. These data represent a serious injury and mortality rate of 0.4 (100 percent of PBR level) per year for right whales, 1.8 (19 percent of PBR level) per year for humpback whales, and 1.4 (7 percent of PBR level) per year for minke whales. The above rates are greater than 1 percent but less than 50 percent of the PBR level for humpback and minke whales, but greater than 50 percent of the PBR level for right whales. Therefore, this fishery is placed in Category I in the 1997 LOF.

Opportunistic reports of free-swimming or stranded animals entangled in lobster pot gear were used to justify the placement of this fishery in Category I. However, it should be noted that opportunistic reports of this type provide a minimum estimate of mortality due to a particular source. These data cannot be extrapolated to provide a total estimated level of serious injury or mortality.

Northern right whale, humpback whale, and minke whale are added as marine mammal stocks that incur injury and/or mortality incidental to the lobster trap/pot fishery.

#### Trawl Fisheries

In the proposed LOF for 1997, NMFS requested public comments on alternative definitions of the trawl fisheries in the Northeast to better reflect current fishing practices. No public comments providing additional information on the fisheries were received. In a future LOF, NMFS may propose to redefine several of the trawl fisheries according to gear type rather than target species to parallel current fishery management practices and to facilitate more efficient data analysis.

#### U.S. Atlantic Large Pelagics Pair Trawl Fishery

A petition to consider pair trawl gear as an authorized gear type in the Atlantic tuna fishery was denied in 1996 because the tuna stocks the fishery targets are either fully- or over-utilized at this time (61 FR 48661, September 16, 1996). Because this fishery has not been authorized under ATCA (16 U.S.C. 971 et seq.), it has been removed from the LOF. Should the fishery be authorized in the future, NMFS will review the level of serious injury and mortality that occurred incidental to this fishery between 1992 and 1996 to determine the appropriate classification in the LOF.

#### Commercial Fisheries in the Pacific Ocean

##### Oregon Swordfish Floating Longline Fishery

The swordfish longline fishery is being separated from the Oregon blue shark longline fishery to ensure that registration under the MMPA remains consistent with the existing state licensing systems. This fishery will be retained in Category II.

##### Oregon Blue Shark Floating Longline Fishery

The blue shark longline fishery is being separated from the Oregon swordfish longline fishery to ensure that registration under the MMPA remains consistent with the existing state licensing systems. This fishery will be retained in Category II.

##### California Squid Purse Seine Fishery

No observer data are available for consideration in classification of this fishery. Between 1989 and 1995, California squid purse seine fishers reported short-finned pilot whale harassment during deterrence attempts, but there were no accounts of pilot whales being injured or killed either by deterrence or gear. The California squid purse seine fishery is currently classified as a Category III fishery. However, the Pacific Scientific Review Group, established under section 117 of the MMPA, recommended that the squid purse seine fishery be monitored with an observer program because of documentation of previous interactions between this fishery and short-finned pilot whales and a lack of current information about marine mammal mortalities and serious injuries incidental to this fishery.

Short-finned pilot whales were once common off Southern California, especially near Santa Catalina Island (Barlow et al. 1995). In early spring, short-finned pilot whales occurred in

inshore waters of California, coincident with the arrival of spawning squid, their main prey source. Dohl et al. (1980) estimated that a resident population of 400 short-finned pilot whales with a seasonal increase of up to 2000 individuals occurred in California waters. Short-finned pilot whales essentially disappeared from the area after the strong 1982–83 El Niño event and few sightings were made between 1984–92 (Barlow et al. 1995). However, short-finned pilot whales appear to have returned to California waters as indicated by recent sighting events and incidental mortality in the drift gillnet fishery for thresher shark and swordfish (average annual mortality = 20). Results from ship surveys in 1993 off California indicate that the estimated abundance of short-finned pilot whales in California/Oregon/Washington is approximately 1,000 animals (NMFS unpublished data). Barlow et al. (1995) concluded that the California/Oregon/Washington short-finned pilot whale population was a “strategic” stock under the MMPA.

Historically, incidental mortality of pilot whales occurred in the squid purse seine fishery in southern California. Twelve pilot whales were observed and reported entangled incidental to this fishery during the 1980 season (Miller et al. 1983). Miller et al. (1983) also reported that pilot whales were occasionally shot in the squid purse fishery when lethal deterrence was legal. Heyning and Woodhouse (1994) analyzed stranding data between 1975–90 and documented that 14 short-finned pilot whales stranded or were found floating dead (most during the late 1970s). They concluded that these pilot whales were probably incidentally killed in the squid purse seine fishery. All animals that were examined had stomachs full of market squid: none of those stranded had evidence of bullet holes, and commercial squid boats were reported to have been working those areas at the time.

Currently, the majority of the purse seine vessels that purse seine offshore California for mackerel, tuna, and anchovy (a Category II fishery) use the same gear to fish for squid in the winter off southern California (California Department of Fish and Game, unpublished data). Although the number of purse seine vessels has remained relatively stable in southern California with approximately 65 squid purse seine vessels in operation, over the last few years, squid purse seine effort and landings have increased.

The regulations implementing section 118 classify all fisheries based on the best available information on incidental mortality and serious injury of marine

mammals. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals in commercial fisheries, the Assistant Administrator will determine whether taking is “occasional” (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 areas.

Due to the possible increase of short-finned pilot whales in California waters, coincidence of the fishery and short-finned pilot whales in southern California waters, historic incidental taking in the California purse seine fishery, and impacts to the short-finned pilot whale stock from other fisheries, NMFS is categorizing the California squid purse seine fishery in Category II.

#### *Other Changes to the List of Fisheries*

##### *Southeastern U.S. Coastal Gillnet*

The Southeast U.S. Atlantic coastal gillnet fishery is deleted from this final LOF. With the exception of certain gillnet fisheries already included separately on the LOF (e.g., Gulf of Maine, Southeast U.S. Atlantic coastal shad, sturgeon gillnet fishery, Gulf of Mexico coastal gillnet fishery, Florida east coast, Gulf of Mexico pelagics king and Spanish mackerel gillnet fishery, Southeastern U.S. Atlantic shark gillnet fishery), coastal Atlantic gillnet fisheries no longer exist south of North Carolina, due to state gillnet bans. Coastal gillnet fisheries in North Carolina are either included in the U.S. mid-Atlantic coastal gillnet fishery, or the North Carolina inshore gillnet fishery.

##### *Gulf of Maine, Southern North Atlantic, Gulf of Mexico Coastal Herring Trawl Fishery*

The Gulf of Maine, Southern North Atlantic, Gulf of Mexico coastal herring trawl fishery is revised as the Gulf of Maine, U.S. mid-Atlantic coastal herring trawl fishery. Although purse seine fisheries for “herring-like” fish such as menhaden and sardine exist in the southeastern U.S., there are no southeastern trawl fisheries targeting these species. In addition, true herring are not found in southeastern U.S. waters.

#### *Summary of Changes to the LOF for 1997*

With the following exceptions, the placement and definitions of U.S. commercial fisheries are identical to that provided in the LOF for 1996 and

thus, the majority of the LOF for 1996 remains valid in 1997. The following summarizes the changes in fishery classification, fishery definition, elimination of fisheries, and species that incur incidental injury or mortality that are made final by this LOF for 1997. For a compiled list of the categorization of all U.S. commercial fisheries, contact the Office of Protected Resources (see **ADDRESSES**).

#### *Commercial Fisheries in the Pacific Ocean*

##### *Category III to Category II:*

The “California squid purse seine fishery” is moved from Category III to Category II.

##### *Fishery definitions:*

The “Oregon swordfish/blue shark surface longline fishery” is separated into the “Oregon swordfish floating longline fishery” and the “Oregon blue shark floating longline fishery”. Both fisheries are retained in Category II.

##### *Removals of fisheries from the LOF:*

The “Oregon swordfish/blue shark surface longline fishery” is removed from the LOF.

Additions to the list of species that incur incidental injury or mortality to a particular fishery:

Short-finned pilot whales are added to the list of species that incurs injury or mortality incidental to the California squid purse seine fishery.

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

##### *Category III to Category I and fishery definition:*

The “Gulf of Maine, U.S. mid-Atlantic inshore lobster trap/pot fishery” and the “Gulf of Maine, U.S. mid-Atlantic offshore lobster trap/pot fishery” are combined and referred to as the “Gulf of Maine, U.S. mid-Atlantic Lobster trap/pot fishery.” This fishery is moved from Category III to Category I.

##### *Fishery definition:*

The “Gulf of Maine mackerel trawl” fishery, which is a Category III fishery, is combined with the “Atlantic squid, mackerel, butterfish trawl fishery” in Category II.

The geographic separation between the “New England multispecies sink gillnet (including species as defined in the Multispecies Fisheries Management Plan and spiny dogfish and monkfish)” and the “U.S. mid-Atlantic coastal gillnet” is changed from 70°40′ W. long to 72°30′ W. long.

The offshore monkfish gillnet fishery, which was in Category III, is combined with either the “New England multispecies sink gillnet (including species as defined in the Multispecies Fisheries Management Plan and spiny

dogfish and monkfish)", which is in Category I, or the "U.S. mid-Atlantic coastal gillnet fishery", which is in Category II, depending on where the monkfish is targeted.

Additions of Fisheries to the LOF:

The "U.S. Atlantic tuna purse seine" is added to Category III in the LOF.

Removals of Fisheries in the LOF:

The "Gulf of Maine, U.S. mid-Atlantic inshore lobster trap/pot fishery" and the "Gulf of Maine, U.S. mid-Atlantic offshore lobster trap/pot fishery" are removed from the LOF.

The U.S. Atlantic large pelagics pair trawl is deleted from the LOF.

The "Gulf of Maine mackerel trawl" fishery is deleted from Category III in the LOF.

The "Offshore monkfish gillnet fishery" is deleted from Category III in the LOF.

Additions to the list of species that incur incidental injury or mortality to a particular fishery:

The North Atlantic stock of harbor seals is added as a stock that incurs injury or mortality incidental to the "Finfish aquaculture" fishery.

#### Other Changes to the LOF

Participants in Category I or II fisheries are required to register under the MMAP. In order to provide additional flexibility for integrated registration systems so that, if key MMPA Authorization Certificate registration information is supplied through integration with state systems, interjurisdictional fisheries programs, and federally managed fisheries, individual fishers would not be required to fill out forms or submit registration information but automatically would be issued registrations and Authorization Certificates.

The benefits of integrating MMPA registration with existing fishery registration or permit programs are clear. Integration results in a reduction in paperwork that must be completed by the fisher, a reduction in paperwork that must be completed by NMFS, and reduced staff burdens for NMFS. In some cases, integration has resulted in the elimination of the MMPA registration fee of \$25.

#### Classification

This action has been determined to be not significant for the purposes of E.O. 12866.

When this LOF for 1997 was proposed, 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 certified that the proposed rule, if adopted,

would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

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 final LOF determines which vessel owners must register under the MMPA, and which commercial fishers must report marine mammal mortalities and injuries within 48 hours of returning to port, as required by the section 118 implementing regulations. These collection of information requirements have been approved by OMB, and the OMB control numbers and public reporting burdens are as follows: reports of marine mammal injury or mortality (0.15 hours per report) under 0648-0292, and registration requirements (0.25 hours per registration) under 0648-0293.

The estimated response times include the time needed for reviewing instructions, searching the existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections-of-information. Send comments regarding these burden estimates, or any other aspects of these collections-of-information to NMFS and OMB (see ADDRESSES).

#### List of Subjects in 50 CFR Part 229

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

Dated: December 26, 1996.

Gary Matlock,

*Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 229 is 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 § 229.4, paragraphs (a), (b), and (e) are revised to read as follows:

#### **§ 229.4 Requirements for Category I and II fisheries.**

(a) *General.* (1) For a vessel owner or crew members to lawfully incidentally take marine mammals in the course of a commercial fishing operation in a Category I or II fishery, the owner or authorized representative of a fishing vessel or nonvessel fishing gear must have in possession a valid Certificate of Authorization. The owner of a fishing vessel or nonvessel fishing gear is responsible for obtaining a Certificate of Authorization.

(2) The granting and administration of Authorization Certificates under this part will be integrated and coordinated with existing fishery license, registration, or permit systems and related programs wherever possible. These programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of Authorization Certificates is integrated into a program, NMFS will publish a notice in the Federal Register announcing the integrated program and summarizing how an owner or authorized representative of a fishing vessel or non-fishing gear may register under that program or how registration will be achieved if no action is required on the part of the affected fisher. NMFS will make additional efforts to contact participants in the affected fishery via other appropriate means of notification.

(b) *Registration.* (1) The owner of a vessel, or for nonvessel gear fisheries, the owner of gear, who participates in a Category I or II fishery is required to be registered for a Certificate of Authorization.

(2) Unless a notice is published in the Federal Register announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear must register for and receive an Authorization Certificate. To register, owners must submit the following information using the format specified by NMFS:

(i) Name, address, and phone number of owner.

(ii) Name, address, and phone number of operator, if different from owner, unless the name of the operator is not known or has not been established at the time the registration is submitted.

(iii) For a vessel fishery, vessel name, length, home port; U.S. Coast Guard documentation number or state registration number, and if applicable; state commercial vessel license number and for a nonvessel fishery, a description of the gear and state

commercial license number, if applicable.

(iv) A list of all Category I and II fisheries in which the fisher may actively engage during the calendar year.

(v) The approximate time, duration, and location of each such fishery operation, and the general type and nature of use of the fishing gear and techniques used.

(vi) A certification signed and dated by the owner of an authorized representative of the owner as follows: "I hereby certify that I am the owner of the vessel, that I have reviewed all information contained on this document, and that it is true and complete to the best of my knowledge."

(3) If a notice is published in the Federal Register announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear may register by following the directions provided in that notice. If a person

receives a registration to which he or she is not entitled or if the registration contains incorrect, inaccurate or incomplete information, the person shall notify NMFS within 10 days following receipt. If a fisher participating in a Category I or II fishery who expects to receive automatic registration does not receive that registration within the time specified in the notice announcing the integrated registration program, the person shall notify NMFS as directed in the notice or may apply for registration by submitting the information required under paragraph (b)(1)(i) through (b)(1)(vi) of this section.

\* \* \* \* \*

(e) *Issuance.* (1) Unless an integrated registration program is in place, NMFS will issue an Authorization Certificate and, if necessary, a decal to an owner or authorized representative who:

(i) Submits a completed registration form and the required fee.

(ii) Has complied with the requirements of this section and §§ 229.6 and 229.7.

(iii) Has submitted updated registration or renewal registration which includes a statement (yes/no) whether any marine mammals were killed or injured during the current or previous calendar year.

(2) If an integrated registration program has been established, an Authorization Certificate or other proof of registration will be issued annually to each fisher registered for that fishery.

(3) If a person receives a renewed Authorization Certificate or a decal to which he or she is not entitled, the person shall notify NMFS within 10 days following receipt. In order for a Authorization Certificate to be valid, the certification must be signed and dated by the owner or an authorized representative of the owner.

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