

waters, the Coast Guard continues to recognize that: (1) It would be difficult for U.S. carriers to effectively implement the regulations without cooperation from foreign governments; (2) in response, foreign governments could impose restrictions on U.S. operations; and, perhaps most importantly, (3) there are distinct advantages to be gained in aligning foreign measures and U.S. measures, especially as they relate to international transportation operations.

For these reasons, the Coast Guard has proposed not to require testing under part 16 in waters subject to the jurisdiction of a foreign government [CGD95-011; 60 FR 43426; August 21, 1995]. The comment period on that NPRM ended October 20, 1995.

In order to allow time to further consider these issues and to formulate a final decision, the Coast Guard has again determined that additional time is necessary. Another delay of approximately one year should provide sufficient time to complete the rulemaking on foreign applicability. Accordingly, the Coast Guard has determined to postpone again the date by which testing programs would commence for persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government.

This final rule delays the applicability of the regulations where they may conflict with foreign law or policy. This rule imposes no additional burdens on the regulated industry. Without this delay in the implementation date, persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government would become subject to the requirements of part 16 on January 2, 1996. Delaying the implementation date ensures that the applicability of part 16 will continue unchanged. Accordingly, the Coast Guard finds that good cause exists under 5 U.S.C. 553(b) to publish this rule without notice and comment and to make this rule effective less than 30 days after publication in the Federal Register.

#### Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 CFR 11034; February 26, 1979). The economic impact of these changes is so minimal that further evaluation is not

necessary. This final rule modifies the effective date for compliance with Coast Guard regulations governing drug testing, insofar as those regulations would require testing of persons onboard U.S. vessels that are subject to the jurisdiction of a foreign government. It does not change the basic regulatory structure of that rule.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the regulatory flexibility requirements. Although exempt, the Coast Guard has reviewed this rule for potential impact on small entities.

The amendment in this final rule only extends a compliance date, and imposes no costs on affected entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to require programs for chemical drug and alcohol testing of commercial vessel personnel has been committed to the Coast Guard by Federal statutes. This final rule does, therefore, preempt State and local regulations regarding drug testing programs requiring the testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government.

#### Environment

The Coast Guard has considered the environmental impact of this final rule, and has concluded that, under section 2.B.2.e(34)(c) of Commandant Instruction M16475.1B, it is

categorically excluded from further environmental documentation. This final rule merely extends an implementation date and clearly has no environmental impact.

#### List of Subjects in 46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, the Coast Guard amends 46 CFR part 16 as follows:

#### PART 16—CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301 and 7701; 49 CFR 1.46.

2. In § 16.207, paragraph (b) is revised to read as follows:

#### § 16.207 Conflict with foreign laws.

\* \* \* \* \*

(b) This part is not effective until January 2, 1997, with respect to any person onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government. On or before December 1, 1996, the Commandant shall issue any necessary amendment resolving the applicability of this part to such person on and after January 2, 1997.

Dated: December 20, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 950605147-5288-03; I.D. 112895A]

RIN 0648-AH33

#### Final List of Fisheries for 1996

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 publishes its MMPA final List of Fisheries (LOF) for 1996. The LOF classifies fisheries as either Category I, II, or III, based on their

level of incidental mortalities and serious injuries of marine mammals. After February 29, 1996, the owner or authorized representative of a fishing vessel or nonvessel fishing gear (hereinafter vessel owner) which participates in a Category I or II fishery must register for and obtain a valid Authorization Certificate.

**EFFECTIVE DATE:** March 1, 1996.

**ADDRESSES:** A copy of the Environmental Assessment (EA) prepared for the section 118 implementing regulations may be obtained by writing to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. 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.

**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. The following provides the history of this final 1996 LOF, clarification of the process used to classify fisheries, and a description of difference between the LOF published under section 114 of the MMPA and this final 1996 LOF.

History of the Final List of Fisheries for 1996

A proposed LOF for 1996 was published on June 16, 1995 (60 FR 31666) with proposed regulations implementing section 118. An EA was prepared concurrently with the development of the proposed

regulations and the LOF and was made available when the proposed regulations were published. The public comment period for the proposed regulations ended on July 31, 1995; the public comment period for the proposed LOF ended September 14, 1995.

The process used to develop the proposed and final rule implementing section 118 included many opportunities for public involvement, such as working sessions, public hearings, written comments, press releases, and a regulatory alert. Additional details on these activities are found in the preamble to the final regulations implementing section 118, published on August 30, 1995 (60 FR 45086).

During July 1995, NMFS held 10 public hearings at various locations throughout the country to receive comments on the proposed implementing regulations and proposed LOF. A total of 86 individuals attended these hearings, 28 of whom submitted oral comments on the proposed rule, LOF or both. NMFS also received 23 written letters of comment specifically on the LOF. Comments were received from fishers, fishing industry groups, environmental groups, animal rights groups, state departments of fisheries, other executive branch departments, and members of the general public.

This final LOF responds only to those public comments addressing the proposed LOF. Comments addressing the proposed implementing regulations for section 118 were included in the preamble to the section 118 final implementing regulations.

#### Definitions of Category I, II, and III Fisheries

The regulations implementing section 118 of the MMPA introduced a new three category fishery classification scheme (50 CFR part 229) based on a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on the rate, in numbers of animals per year, of serious injuries and mortalities due to commercial fishing relative to a stock's potential biological removal (PBR) level.

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

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

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

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

Tier 1, therefore, considers the cumulative fishery mortality and serious injury for a particular stock, while Tier 2 considers fishery-specific mortality for a particular stock. Additional details regarding how threshold percentages between the categories were determined are provided in the final rule implementing section 118.

#### Differences Between the LOF Under Section 114 and the LOF Under Section 118

There are several key differences between the LOF required and prepared under expired section 114 and the new LOF required and prepared under section 118.

Under section 114, fisheries were classified based on the number of incidental takes of marine mammals. As defined in 50 CFR 216.3, takes include harassment. Under section 118, fisheries are to be classified based on the number of serious injuries and mortalities that occur incidental to that fishery. Also, under section 118 intentional lethal mortalities and serious injuries of marine mammals are prohibited. Thus, incidental or intentional harassment, or intentional lethal takes are no longer used to classify fisheries into a particular category.

The fishery classification criteria under section 114 were dependent on the rate of all marine mammal takes per 20 days. The criteria are now based on the annual rate of incidental, species-specific serious injury and mortality of marine mammals relative to a particular marine mammal stock's PBR level.

Under section 114, fisheries were typically classified primarily based on observer data and logbook data, although analogy to fisheries with similar gear types could be made. Under the new regulations pursuant to section 118, observer data, logbook data, stranding data, fishers' reports, anecdotal reports, and analogy are used to classify fisheries.

Both sections 114 and 118 require that the marine mammal species involved in interactions with each fishery be identified in the LOF. Under section 114, "involved" was interpreted broadly and included those marine mammals

known or reported to be harassed by fisheries, and those marine mammals suspected to be injured, killed, or harassed incidental to commercial fishing operations. The list of marine mammal species identified in the final LOF for 1996 includes only those marine mammals that have been documented as having been injured or killed in observer programs, logbook reports, strandings data, or by fishers' reports or anecdotal reports. This list includes only those marine mammals that have been injured or killed incidental to commercial fisheries since 1989.

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

Vessel 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 conducted on a NMFS Region-specific basis. Thus, how registration materials are distributed and the cost of registration differ between Regions. Under 50 CFR 229.4, the granting and administration of Authorization certificates is to be integrated and coordinated with existing 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 Southeast Region. Special procedures and instructions for registration in these Regions appear below.

If the granting and/or administration of authorizations has not been integrated with state licensing, registration, or permit systems, vessel owners may obtain registration forms 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. 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 new 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 the \$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.

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

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

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**.

##### *Alaska Region (AKR) MMAP Registration for 1996*

Vessel owners in Category I and II state and Federal fisheries, as well as all vessel owners with Alaska Department of Fish and Game commercial vessel licenses, will receive a registration packet. Fishers may not register with other regions for Alaska fisheries. If a fisher plans to participate in a Category I or II fishery and does not receive a registration packet, AKR should be contacted see **ADDRESSES**.

##### *Northwest Region (NWR) MMAP Registration for 1996*

Oregon: Under an agreement developed between NMFS and the Oregon Department of Fish and Wildlife (ODFW), information collected for licensing purposes by the state of Oregon will be provided to NMFS in lieu of NMFS requiring a separate MMAP registration. Vessel owners in Oregon who apply for and obtain a Developmental Fisheries Permit to harvest and land swordfish using drift gillnet gear (CA/OR thresher shark/swordfish drift gillnet fishery; Category I) or a Developmental Fisheries Permit to harvest and land swordfish or blue shark using surface longline gear (OR swordfish/blue shark surface longline fishery; Category II) will automatically receive an Authorization for the incidental take of marine mammals at the time of permit issuance. Vessel owners will receive marine mammal injury and mortality reporting forms along with their fisheries permit and Authorization.

The number of available Developmental Permits for these fisheries is limited and the information necessary to fulfill the requirements of

the MMPA is already being collected by ODFW for Developmental Permit processing. NMFS will provide limited support to ODFW for the issuance of the Authorizations. Processing costs for ODFW are expected to be minimal, and hence, MMAP registration fees will not be charged to Developmental Fishery permit holders in 1996.

Since the Authorization will be issued in combination with the Developmental Fisheries Permit, it is specific to the permit and will only authorize the incidental take of marine mammals during fishing activities conducted under this permit. Fishers who participate in the CA/OR thresher shark/swordfish drift gillnet fishery under permits to harvest and land in California must apply for and obtain a MMAP Authorization Certificate from the NMFS Southwest Region.

ODFW will provide NMFS with the following information:

- (1) Name, address, and phone number of the Vessel Owner;
- (2) Name, address, and phone number of the Permit Holder;
- (3) Vessel name, U.S. Coast Guard documentation number, or state registration (OR) number (as applicable), and ODFW Developmental Fishery Permit number for the permitted vessel. NMFS will incorporate the information into a national data base of registered Category I and II fishers.

Washington: Under an agreement developed between NMFS and the Washington Department of Fish and Wildlife (WDFW), information collected by the State for licensing purposes will be provided to NMFS in lieu of NMFS requiring a separate MMAP registration. Vessel owners in Washington who apply for and obtain a Puget Sound Gillnet License to harvest and land salmon using drift gillnet gear (WA Puget Sound Region salmon drift gillnet fishery; includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line—Treaty Indian fishing is excluded; Category II) will automatically receive an Authorization for the incidental take of marine mammals at the time of license issuance. Fishers will receive marine mammal injury/mortality reporting forms along with their fisheries license and Marine Mammal Authorization.

The information necessary to fulfill the requirements of the MMPA is already being collected by WDFW for Fishing License processing and NMFS will provide limited support for the issuance of the Authorization. Processing costs for WDFW are expected to be minimal, and hence, MMAP registration fees will not be charged to license holders in 1996. Since the

Authorization will be issued in combination with the Puget Sound Gillnet License, it is specific to this license and will only authorize the incidental take of marine mammals during fishing activities conducted under this state-issued license. Fishers who participate in other Category I or II fisheries to harvest and land fish in other States must apply for and obtain an MMAP Authorization Certificate from the appropriate NMFS regional office to cover that activity (see procedures for the applicable state/Federal fishing activity).

WDFW will provide NMFS with a copy of the following information:

- (1) Name, address, and phone number of the Owner of the Designated Vessel;
- (2) Name(s), address(es), and phone number(s) of License Owner, Primary Operator, and Alternate Operators;
- (3) Vessel name, U.S. Coast Guard documentation number, or state registration (WN) number (as applicable), and WDFW registration number of the designated vessel. NMFS will incorporate the information into a national data base of registered Category I and II fishers.

#### *Southwest Region (SWR) MMAP Registration for 1996*

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 1997. For this reason, Category I and II vessel owners in California will continue to register with SWR. In December 1995, vessel owners who engaged in a Category I or II fishery in 1995 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, 1995, may request one from NMFS SWR (see ADDRESSES).

#### *Southeast Region (SER) MMAP Registration for 1996*

The only state fisheries in Category I or II that are under SER jurisdiction occur in North Carolina. State fishers in North Carolina will 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 1996*

NER will distribute registration packets to those fishers on existing lists

of registrants in the MMEP program, fishing vessel permit holder lists, and lists of state fishers obtained from New Jersey, Delaware, Maryland, and Virginia. Fishers participating in Category I or II fisheries should contact NER (see ADDRESSES).

#### *Extension of Effective Period for Current List of Fisheries and Extension of Current Registrations of Vessel Owners*

The preamble to the final regulations implementing section 118 stated that vessel owners holding a valid Exemption Certificate under section 114 will be deemed by NMFS to have registered under section 118 through December 31, 1995. Because it has taken longer than expected to publish the MMPA final LOF for 1996, the current MMPA LOF will remain in effect until March 1, 1996, and vessel owners holding a valid Exemption Certificate under section 114 will be deemed to have registered under section 118 until March 1, 1996. This extension will also allow vessel owners sufficient time to register under section 118 of the MMPA. In general, NMFS recommends that completed registration forms be submitted as soon as possible in advance of fishing in order to ensure that a valid Authorization Certificate has been received.

#### *Extension of Interim Permit for the Incidental Taking of Threatened or Endangered Marine Mammals*

On August 31, 1995, NMFS issued a single interim permit, valid through December 31, 1995, to certain vessel owners currently registered in Category I and II commercial fisheries for the incidental, but not intentional, taking of marine mammal stocks listed as threatened or endangered under the Endangered Species Act (60 FR 45399). Individual permits for 1996, 1997, and 1998 will be issued in conjunction with the issuance Authorization Certificates under section 118 of the MMPA. Because the current MMPA LOF will remain in effect until March 1, 1996, and vessel owners holding a valid Exemption Certificate under section 114 will be deemed to have registered under section 118 until March 1, 1996, NMFS hereby extends the interim permit until March 1, 1996.

#### *Reporting Requirements for All Vessels*

Vessel owners or operators 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 will be considered injured and must be reported. Instructions for submission of reports is found in 50 CFR 229.6(a).

#### *Responses to Comments*

Many comments were lengthy and raised many points of concern. Key issues and concerns are summarized and responded to as follows:

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

*Comment 1:* Incidental and intentional mortality of marine mammals appear to be under reported for the Alaska Yakutat salmon set gillnet fishery, indicating the fishery should be in Category I instead of Category II. It is strongly recommended that an observer program be established in Yakutat and Dry Bay, so that more reliable information on intentional killing of marine mammals might be available.

*Response:* The intentional lethal take of marine mammals was made illegal by the 1994 amendments to the MMPA, except in situations where it is imminently necessary in self defense or to save the life of a person in immediate danger. Since intentional lethal takes are no longer authorized, NMFS cannot use rates of this type of take to categorize fisheries for the section 118 regime. Incidental, but not intentional, marine mammal serious injury or mortality rates, are used for categorizing fisheries for this final LOF. With the information available to NMFS at this time, the incidental serious injury and mortality rate of marine mammals in the Yakutat set gillnet fishery places them in Category II. Fishery categories are evaluated each year, and as more information becomes available, it will be used in these evaluations.

*Comment 2:* The report of low injury rates to humpback whales and Steller sea lions in many fisheries appears to be due to a lack of data rather than to a solid understanding of the rate of injury.

*Response:* NMFS agrees that there is a lack of data regarding serious injury and mortality rates for many fisheries in Alaska. Only three fisheries are regularly observed for marine mammal interactions, and only three other fisheries have ever been observed; one for two seasons and two others for one season each. NMFS is currently evaluating observer needs in the region and intends to formulate and implement a long-term plan for observer coverage of Alaska fisheries. The extent of future

coverage will depend on the availability of funds.

*Comment 3:* The Bering Sea and the Aleutian Islands trawl fisheries should be separated for the purpose of setting categories. Many of the commercial fishing quotas are set separately for the Bering Sea and Aleutian districts and the ecosystems have somewhat different characteristics. There is no justification for declaring both areas the same fishery for purposes of categorization if marine mammal interactions occur in only one area. To classify all the Bering Sea and Aleutian trawl fisheries as the same category for marine mammal interactions that occur in only one target fishery or in only one portion of the area is arbitrary and capricious and inflicts unwarranted regulations on a large number of vessels.

*Response:* Splitting the fishery into smaller statistical areas would isolate the portions of those fisheries that are responsible for marine mammal takes. However, because the Bering Sea and Aleutian Islands statistical areas are contiguous and most participants fish in both areas, categorizing the two areas separately would have little practical value and would make management difficult.

*Comment 4:* Being classified as a Category I or II fishery imposes serious reporting requirements on many small business entities.

*Response:* Since the publication of the final implementing regulations for section 118 of the MMPA, on August 30, 1995, logbooks of fishing effort and marine mammal interactions are no longer required to be kept and turned in annually. The reporting requirements now in effect have been reduced to submitting a one-page report on a form supplied by NMFS within 48 hours of returning from the fishing trip (or from tending non-vessel gear) in which an incidental injury or mortality to a marine mammal occurred. Thus, the reporting requirements are limited to occurrences of an injury or mortality to a marine mammal in the course of fishing operations.

*Comment 5:* Although commenters supported the use of scientific evidence to determine the total allowable fishery induced mortality for a marine mammal stock, serious questions were raised regarding the data used to classify the Bering Sea/Aleutian Island (BSAI) groundfish trawl fishery. The take of two killer whales during the period 1990–93 resulted in moving BSAI trawl fisheries from Category III to Category II. However, the 1995 marine mammal stock assessment for killer whales indicates that the minimum population estimate is based on a direct count, with

no available correction factors. Commenters also indicated that no reliable data on the population abundance of killer whale stocks were available and neither was a reliable estimate of maximum net productivity rate. Therefore the use of overly conservative measures in setting the acceptable level of fishing induced mortality should be discouraged. Better and more relevant data are needed before reclassifying all BSAI trawl fisheries as Category II.

In the NMFS stock assessment report (SAR) for the Alaska region, the killer whale chapter is divided into two sections, resident (759 animals) and non-resident (245 animals) populations. The total population size is 1004 animals. The total killer whale take is two animals—the population from which each was taken is listed as unknown. A commenter calculated the PBR level based on the entire population ( $1004 \times 0.02 \times 0.5$ ) which resulted in a PBR level of 10.4 animals. The annual take as reported in the SAR is 0.8 animals per year. This number (0.8) divided by 10.4 animals (PBR) results in a take of 7.69 percent of PBR, not 10 percent as stated in the proposed LOF. It should be noted that the two sections of the killer whale chapter each calculate PBR level separately, 7.6 for resident killer whales and 2.4 for the non-resident population. The proposed LOF notice does not say which number was used to move the BSAI trawl fishery into Category II. Obviously, the killer whale population was not considered as a whole.

*Response:* NMFS believes that calculating the percentages of the PBR level separately for the two killer whale stocks is the most risk-averse approach.

The BSAI groundfish trawl fishery will be classified in Category III. This fishery was proposed to be classified in Category II in the proposed LOF based on serious injuries and mortalities of killer whales. However, because the level of serious injury and mortality to killer whales in this fishery is low (0.8 to 1.4 animals per year), the fishery is observed with over 60 percent observer coverage, and the population estimates for both the resident and transient stocks of killer whales are direct counts of known individuals and thus underestimate the total stock size, it is likely that the serious injury or mortality of approximately one killer whale per year is not adversely impacting the population. In addition, the final SARs for resident and transient killer whales notes that these stocks are not considered to be strategic.

If information becomes available that indicates that this observed fishery has

excessive incidental serious injuries or mortalities from killer whale stocks or other stocks of marine mammals, it will be reclassified as necessary.

*Comment 6:* The August 9, 1994, draft stock assessment shows “zero” Pacific coast fishery mortalities of humpback whales. Yet the current proposed LOF would reclassify the Southeast Alaska salmon purse seine fishery from Category III to Category II, because “total known humpback whale mortality and serious injury level across all fisheries exceed 10 percent of this stock’s PBR, and the known serious injury level for this fishery is 0.4 animals per year.” The EA implies that the take in this fishery was documented through a single voluntary report, but does not describe the nature of the interaction (i.e., mortality, entanglement, etc). According to the proposed LOF, the Southeast Alaska salmon drift gillnet fishery also has a known mortality and serious injury rate of 0.13 animals per year, but the EA makes no mention of any humpback takes by this fishery.

*Response:* The reports of humpback whale mortalities in the Southeast Alaska purse seine fishery were identified after the publication of the August 9, 1994 draft stock assessments. There were two mortalities of humpback whales in this fishery, one in 1989 and one in 1994. In both cases, individual whales became entangled in purse seine nets being actively fished. One whale was entangled in the bunt and subsequently in the net. The second whale became entangled in the lead line and then wrapped in the net as it tried to free itself. The fishers involved tried to free the whales, but were unsuccessful. Data on humpback whale entanglements in the Southeast Alaska salmon drift gillnet fishery came from stranding network data, but, in addition, there have been several cases where fishers have notified the Coast Guard or NMFS, and NMFS personnel assisted with freeing the whales. This kind of cooperation is greatly appreciated by NMFS.

*Comment 7:* One commenter was disturbed by the weight one unsubstantiated anecdotal report of a marine mammal take was given in determining the category status of the Southeast Alaska salmon purse seine fishery and believed the procedures used to document and authenticate this report were seriously lacking. The commenter asserted that while NMFS may be erring on the side of caution because humpback whales are a strategic stock and because of a low population estimate, a low estimate does not validate an unconfirmed

report. Based on the commenter's experience, mortalities and serious injuries to humpback whales due to interactions with purse seine gear are extremely rare, and seiners will expend a great deal of effort to avoid any interaction with whales because of damage to the gear and a substantial loss of fishing time. The commenter believed that a Category III listing is more appropriate for this fishery. Even if the Southeast Alaska salmon purse seine fishery were to remain in Category III, NMFS could still use alternative monitoring methods to acquire reliable information on the fishery's humpback interactions.

*Response:* Fisheries are classified based on the annual number of incidental serious injuries and mortalities relative to the PBR level for each marine mammal stock. Thus, a fishery could be placed in Category I or II as a result of a high mortality level or a low population abundance estimate, or some combination of the two. The weight that any number of serious injuries or mortalities in a given marine mammal stock has on categorization of fisheries is directly related to the PBR level for that stock. In the case of the central North Pacific stock of humpback whales, the PBR level is 2.8 animals. There were three mortalities reported for all fisheries between 1989 and 1994. In a Tier I categorization evaluation, this calculates to a rate of 0.5 animals per year, or 17.9 percent of the PBR level. Because this rate is higher than 10 percent of the PBR level, the effects of individual fisheries must be evaluated. There were two reported mortalities to humpbacks in the Southeast Alaska purse seine fishery, one in 1989 and one in 1994. The mortality rate for this fishery calculates to 0.33 animals per year, or 11.9 percent of the PBR level. Because this rate is greater than 1 percent, but less than 50 percent of the PBR level, the fishery is placed in Category II.

NMFS does not consider these Category III reports to be unreliable and has full confidence in their veracity. These data were reported by a crew member aboard the vessel(s) that interacted with the whales. The reports have been given no special treatment or additional weight.

NMFS agrees that the mortality and serious injury rate of humpbacks in the Southeast Alaska salmon purse seine fishery were low. However, the annual rate of serious injury and mortality in this fishery does fit the definition of a Category II fishery. If the categorization criteria were ignored, and the fishery was placed in Category III, NMFS would have no mechanism except for

voluntary cooperation of Category III fishers, short of an emergency rule, to monitor the fishery interactions with humpbacks. Because the incidental serious injury or mortality of a humpback whale in a purse seine net is a "no-win" situation for all parties concerned, NMFS would like to work with the fishing industry to understand the nature of these interactions and develop means for fishers to avoid them, as well as effective responses if an interaction does occur.

*Comment 8:* Using the PBR level to classify fisheries has advantages, but it is only as accurate as the data being used. It is our understanding that the population estimate for humpbacks is 12 years old and is based on a survey done in Hawaii. How often will NMFS update its population estimates for strategic stocks?

*Response:* Stock assessment reports (SAR) for strategic stocks are required by the MMPA to be reviewed annually. Additional data for population estimates will be gathered according to the greatest need and subject to the availability of funds.

NMFS acknowledges that the population estimates for the Central North Pacific stock of humpback whales are problematic, and intends to address them in the next couple of years through new analyses of recent data and population surveys.

*Comment 9:* The Alaska Peninsula/Aleutian Island salmon drift gillnet should be classified in Category III and not in Category II as proposed. The rationale presented for a Category III categorization is that the drift gillnet fishery takes 1.8 percent of the PBR level for Dall's porpoise, although the Alaskan Dall's porpoise stock is one of the few stocks for which a determination has been made that the optimum sustainable population level is met. The PBR level is calculated to be 1,537 and the SAR indicates total estimated fishery mortality is 41 per year, well less than 10 percent of the PBR level. This, by itself, should result in a Category III classification. Further, using extrapolated data, the estimated mortality rate for the Alaska Peninsula drift gillnet fishery is 1.8 percent, just over the Tier 2 threshold of 1 percent of the PBR level for a Category II classification.

*Response:* NMFS agrees that classification of commercial fisheries should be based on reliable information. The most reliable source for this information are observer programs, which can be employed for fisheries classified in Category I or II but can only be employed for a Category III fishery if emergency regulations are in effect.

Because of this statutory limitation, NMFS is uncomfortable with classifying a fishery as Category III if data exist that suggest the marine mammal incidental take level may be above the relevant threshold. The Alaska Peninsula/Aleutian Islands salmon drift gillnet fishery, like other salmon drift gillnet fisheries in Alaska, has documented takes of a variety of marine mammal stocks (Dall's porpoise, harbor porpoise, harbor seals, northern fur seals, walrus and unidentified small cetaceans). Because of inadequate observer coverage across fisheries in Alaska, NMFS considers the current information on take levels for many stocks to be underestimates. Dall's porpoise serious injury and mortality is documented in the logbooks from six fisheries. Based on those levels, NMFS believes that if more accurate observer information were available, the level of Dall's porpoise takes would exceed the 10 percent threshold across all fisheries. In that case, the Alaska Peninsula drift gillnet fishery, with its Dall's porpoise take level of 1.8 percent the PBR level, would be classified in Category II.

Additional support for placement of this fishery in Category II is based on low levels of harbor porpoise serious injuries and mortalities documented in logbook reports submitted in this fishery. Because the documented annual serious injury and mortality of harbor porpoise in Alaska is greater than the 10 percent threshold level across all fisheries, and because logbook reports represent an underestimate of the total number of serious injuries and mortalities in a fishery, the total impact to the harbor porpoise population may be above the 1 percent of PBR level that would cause this fishery to be classified as Category II.

*Comment 10:* The rationale regarding the proposed Category II classification of Alaska Peninsula set gillnet fishery is weak. It states that this fishery takes a substantial number of marine mammals. The proposed LOF does not discuss what data suggest that levels of mortality and serious injury may exceed 10 percent of each stock's PBR level if observer information were available, why it is to be expected that incidental mortality may exceed certain levels, or why this fishery would interact with similar species as do set gillnet fisheries in other areas. In this case, classification is too speculative and supports classification of the Alaska Peninsula/Aleutian Islands salmon set gillnet fishery in Category III.

*Response:* Because this fishery has documented mortalities and serious injuries to marine mammals at an unknown rate, has never been observed,

and uses a gear type with the potential to take various species of marine mammals, NMFS believes that placing this fishery in Category II is warranted until additional information can be collected. When more reliable information becomes available, the level of marine mammal mortality and serious injury in this fishery will be reassessed. (See response to Comment 9 regarding the level of harbor porpoise serious injuries and mortalities in this fishery.)

*Comment 11:* One commenter noted that there is no mention of humpback whale interactions with the Prince William Sound salmon drift gillnet or the AK Peninsula/Aleutians salmon drift gillnet fisheries. The commenter believed that this species may have been inadvertently omitted from the list of species involved in interactions with these fisheries.

*Response:* NMFS has no information regarding any humpback mortalities or serious injuries in the Prince William Sound or Alaska Peninsula/Aleutian Islands drift gillnet fisheries.

*Comment 12:* The proposed LOF states that the classification of the Southeast Alaska salmon drift gillnet fishery is based on observer and strandings data and does not mention logbook data. The stock assessment for humpback whales mentions that logbook data from salmon and herring gillnet fisheries indicate that humpbacks are entangled. The commenter presumed that since the Southeast Alaska salmon drift gillnet fishery is the only gillnet fishery with humpbacks listed as taken, it is logbook reports from this fishery that led to the statement in the SARs. Given that logbooks are known to under report interactions, the commenter believed that this fishery might be more appropriately classified as a Category I fishery.

*Response:* Stranding data is used to document humpback whale interactions with the Southeast Alaska salmon drift gillnet fishery. There are no reported humpback mortalities or serious injuries for this fishery in the logbook data. The currently available data support placing this fishery in Category II based on humpback whale and harbor porpoise mortalities. The annual level of harbor porpoise mortality and serious injury in this fishery based on logbook reports was 3.25 per year, or 1.3 percent of the PBR level. There were no humpback mortalities or serious injuries reported in logbooks for drift gillnet fisheries, but there were Category III reports from fishers indicating mortalities occurred in 1989 and 1994, not 1993 and 1994 as stated in the SAR.

*Comment 13:* Drift and set gillnet fisheries in Cook Inlet, Yakutat, Alaska Peninsula/Aleutian Islands, Kodiak Island and Bristol Bay are not listed as interacting with humpback whales. Given the information in the SARs that logbook data from salmon and herring gillnet fisheries indicate that humpbacks are entangled, these fisheries should be considered to interact with this species. It also seems likely that these fisheries all interact with harbor porpoise. The commenter noted that a NMFS Federal Register notice dealing with harbor porpoise acknowledged that wherever harbor porpoise and gillnets coincide, harbor porpoise are caught. Further, in the Federal Register notice (60 FR 45399) that lists fisheries permitted to take endangered and threatened species under section 101(a)(5)(e) of the MMPA, these set gillnet fisheries are specifically permitted to take Steller sea lions, although no Steller sea lions are listed in the LOF as interacting with these fisheries. Also, the Southeast Alaska salmon purse seine, Alaska herring roe food/bait purse seine fisheries and salmon troll do not have humpbacks listed as a species with which it interacts, even though the SARs indicate they do interact. Finally, there are fisheries with "none documented" listed as their interactions, but the commenter believes that analogy to other fisheries might indicate otherwise.

*Response:* The list of marine mammals that interact with each fishery has been revised. Only marine mammal species that have incurred documented mortalities and injuries in a given fishery are included in this list. Analogy is not used to determine which stocks interact with a particular fishery.

There may be discrepancies between the list of marine mammal species identified in the LOF published pursuant to section 118 and the list published pursuant to section 101(a)(5)(E), due to an attempt by NMFS to issue interim permits to all fisheries that may have interactions with marine mammal species listed under the Endangered Species Act, while the section 118 LOF includes only those marine mammal species or stocks with documented injuries and mortalities incidental to a particular commercial fishery.

*Comment 14a:* The Alaska Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet fisheries are acknowledged as likely to have occasional interactions with marine mammals, yet have been placed in Category III because these interactions are believed to "result in directed takes for subsistence purposes." Because

these fisheries do not have observer data available, and given that they interact with harbor porpoise and beluga whales, the commenter believes these fisheries should be placed in Category II and be subject to observer coverage.

*Response:* NMFS believes that virtually all takes of marine mammals related to these fisheries are actually directed takes by Alaska Natives for subsistence use. Any marine mammals that are taken incidentally in these fisheries are likewise retained for subsistence use by Alaskan Natives. NMFS is currently developing cooperative agreements with Alaska Native organizations for the management of marine mammals in Alaska used for subsistence purposes. The number of animals taken in the above fisheries and used for subsistence will be considered through co-management agreements rather than under section 118.

*Comment 14b:* The Alaska salmon troll and sablefish longline/set line fisheries intentionally killed orcas in the past, and it is optimistic to believe that these intentional killings will cease simply because they are now illegal. The commenter believes that these fisheries warrant further monitoring and should be placed in Category II.

*Response:* See the response to Comment 1 for explanation of how intentional lethal takes will be addressed by NMFS. NMFS does not have data documenting incidental mortalities or serious injuries of killer whales for these fisheries.

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

*Comment 15:* The Columbia River salmon fishery is appropriately placed in Category III.

*Response:* NMFS agrees.

*Comment 16:* The California/Oregon/Washington (CA/OR/WA) thresher shark/swordfish/blue shark drift gillnet fishery should be renamed in the final LOF to accurately reflect the target species and the current state licensing practices for the fishery. The Washington portion of the fishery should be deleted since there is no Washington licensed swordfish gillnet fishery.

*Response:* The CA/OR thresher shark/swordfish drift gillnet fishery has been renamed. The reference to blue shark has been removed because this species may not be landed in Oregon and is not a target species in the California fishery. The reference to Washington has been removed because this fishery does not occur in waters off Washington, nor does Washington State permit the

harvest or landing of either thresher shark or swordfish.

*Comment 17:* NMFS should retain commercial fisheries classified in Categories I or II under the Interim Exemption on the basis of intentional lethal take in those categories until it has been demonstrated that the intentional lethal takes have ceased.

*Response:* Because intentional lethal takes of marine mammals are now illegal, except in cases of self defense or in order to save the life of a person in imminent danger, and because fisheries must be categorized based on incidental serious injury or mortality, commercial fisheries will not be classified on the basis of the number of intentional lethal takes. In addition, NMFS does not believe that continuing registration requirements for fisheries that have been moved to Category III based on the available information will have any effect on the degree of compliance with the intentional lethal take prohibition. To the extent that reporting requirements are consistent for all fisheries, regardless of category, NMFS anticipates that fishers reports will continue to provide qualitative information as an indicator of incidental take levels. This qualitative information can be useful in determining the need for more intensive monitoring. NMFS will continue to investigate illegal takes of marine mammals regardless of whether vessels are registered.

*Comment 18:* No information on incidental takes of marine mammals is available for the Washington/Oregon (WA/OR) herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet fishery. A lack of information does not mean that no serious injuries or mortalities have occurred. Analogy with other gillnet fisheries could justify placing this fishery in Category II.

*Response:* As indicated in the EA, non-salmon gillnet fisheries in the Northwest, (i.e., WA/OR herring, smelt, shad, sturgeon, bottomfish, mullet, perch, and rockfish gillnet) are predominantly in-river fisheries. NMFS is not aware of any information indicating that incidental takes of marine mammals are occurring in these fisheries.

*Comment 19:* Because salmon net pen and ranch fisheries, and the California/Oregon/Washington (CA/OR/WA) salmon troll fisheries have histories of lethal takes of pinnipeds, these fisheries should remain in Category II until NMFS receives documentation that the lethal takes have ceased.

*Response:* The incidence of intentional lethal take was not used for categorizing fisheries under section 118

of the MMPA. (See response to Comment 17.)

*Comment 20:* Serious injuries and mortalities of humpback whales caused the Southeast Alaska salmon purse seine fishery to be proposed for Category II. By analogy, the Washington (WA) salmon purse seine should also be placed in Category II and the humpback whale should be listed in the LOF as an interacting species.

*Response:* There are no records of interactions between the Washington salmon purse seine fishery and humpback whales. Humpback whales are only rarely sighted in the inland waters of Washington where the fishery operates.

*Comment 21:* The humpback whale should be listed in the LOF as an interacting species for the Washington/Oregon/California (WA/OR/CA) groundfish, bottomfish longline/set line fishery, and this fishery should be considered for classification in Category II.

*Response:* There are no records of humpback whale interactions with this fishery; thus this fishery is placed in Category III.

*Comment 22:* Analogy to the intentional lethal takes that occur during commercial net pen fisheries should be used to place salmon enhancement rearing pens in Category II.

*Response:* Because salmon enhancement rearing pens have not been considered a commercial fishing operation, in the past they have not been subject to requirements of section 118. If NMFS were to consider this a commercial fishery, analogy would indicate correct placement of salmon enhancement rearing pens in Category III, because interactions would be similar to commercial net pens without any active deterrence methods. As indicated in the EA, the incidence of mortality or serious injury resulting from gear interactions with net pens is less than one percent of the PBR for the stocks that interact with net pen fishery operations (harbor seals and California sea lions).

Because enhancement rearing pens are typically not considered commercial fisheries, NMFS will consider proposing to remove this fishery from the LOF in a future proposed LOF.

#### *Comments on Fisheries in the Northeast and Southeast Regions*

*Comment 23:* The mid-water squid fishery defined in the proposed LOF does not exist. It's a bottom trawl fishery, and not mid-water. It should not be lumped with other mid-water gear.

*Response:* Mackerel, butterfish, and squid are fished by trawl in a similar manner, with minimal modifications to gear. A mid-water squid trawl fishery does exist, although it is not the preferred fishing method for this species at this time. NMFS agrees that "Atlantic mid-water trawl" may not be an accurate description of the fishery. In this final LOF, this fishery is renamed "Atlantic Squid, Mackerel, Butterfish Trawl" with no reference to the depth at which the gear is fished. This fishery is placed in Category II based on serious injuries and mortalities of pilot whales recorded in fishers' logbooks. In addition, and regardless of the trawl method used, a potential for incidental interactions between this fishery and marine mammals exists, because squid, mackerel, and butterfish are important prey species for marine mammals.

*Comment 25:* The number of marine mammal mortalities and serious injuries as published in the proposed LOF and the method used to extrapolate raw data into a total estimated take needs to be explained, especially with regard to pilot whale mortalities in the longline fishery. In addition, the source of the data indicating humpback whale and minke whale interactions with the longline fishery should be cited. The number of participants listed in Table 2, 830, is a considerable overestimate of the total number of vessels in the fleet. If this information were used to extrapolate the observer data, the total number of takes in the fishery would be greatly overestimated. The Atlantic Ocean, Caribbean and Gulf of Mexico swordfish, tuna, and shark longline fishery should not be listed as a Category I fishery but should remain in Category II.

*Response:* NMFS observers recorded one mortality of a pilot whale in coverage scheduled between late 1992 and 1993. The mortality occurred in the U.S. Atlantic Ocean. In addition, 24 non-lethal interactions (2 injuries and 22 unspecified interactions) of pilot whales have been observed in the fishery. It is unknown how many of these animals eventually died due to injuries resulting from entanglement. Observed kills of other species include one Risso's dolphin in 1993, which occurred in the Gulf of Mexico.

The annual level of serious injury and mortality for this fishery was not calculated by extrapolating observed serious injuries and mortalities to the entire fishery using the number of permitted vessels. Rather, it was calculated by extrapolating observed serious injury and mortality in the whole fishery using the total number of sets reported in the mandatory fishing



vessel logbooks. The pilot whale mortality was not reported as coming from the long- or short-finned stock; however, the estimated total mortality of pilot whales exceeds the 50 percent of the PBR threshold for either long-finned or short-finned pilot whales. Therefore classification in Category I is warranted.

In addition, section 114 Marine Mammal Exemption Program (MMEP) logbook data support a Category I classification. Injuries and mortalities reported in the MMEP from 1990 through 1992 indicate that an average of nine pilot whales are injured or killed in longline gear each year. A variety of other marine mammal species, including but not limited to bottlenose dolphins, harbor porpoise, Risso's dolphins, and unidentified large cetaceans, have also been recorded as injured or killed. NMFS has also received sighting reports (both at sea and stranded) of whales carrying gear which may be attributable to the pelagic longline fishery. Species listed in these reports include humpback whale, sperm whale, long-finned pilot whale, and minke whale.

*Comment 26:* The Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet fishery, Long Island Sound inshore gillnet fishery, Delaware Bay inshore gillnet fishery, and North Carolina inshore gillnet fishery are currently, and incorrectly, listed as Category III fisheries. These fisheries interact on a sufficiently high level with humpback whales, minke whales, bottlenose dolphins and harbor porpoise that they should be moved to Category II.

*Response:* These inshore and bay fisheries were divided out from other mid-Atlantic coastal gillnet fisheries, because there were no observed takes in these areas, and because it is believed that there is a low probability of interaction. In the last several years, an interaction problem with small cetaceans has been identified in the mid-Atlantic based on observations of stranded animals. It is possible to identify evidence of gillnet interactions from a stranded specimen, but it is not yet possible to determine conclusively which gillnet fishery is responsible for the interaction unless the gear is recovered with the carcass, which is not usually the case. Based on the geographic distribution of strandings, marine mammal high-use areas, and concentrations of fishing gear, NMFS believes that the gillnet interactions in the mid-Atlantic occur largely in areas outside the "inshore" fishery division lines. Placement of these inshore

fisheries into Category II is not warranted at this time. However, recent information (1994-1995) indicates that marine mammal incidental serious injury and mortality in some of these inshore fisheries may be higher than originally believed. These fisheries will be re-evaluated based on an examination of more recent stranding data when developing the next proposed LOF.

*Comment 27:* The pair trawl fishery should be renamed, as it occurs between Cape Hatteras and the Hague Line, and not in the Caribbean Ocean, the Gulf of Mexico, or off the Grand Banks of Newfoundland. The references to sharks should also be deleted from the name of the fishery, as sharks are not targeted and are, in fact, minimally represented in the bycatch. In addition, the number of participants in the fishery needs to be updated, as the number included in the proposed LOF is incorrect.

*Response:* NMFS agrees that the fishery should be renamed. Therefore, the fishery is now listed as "U.S. Atlantic Large Pelagics Pair Trawl" and the number of participants has been updated in the final LOF.

*Comment 28:* The average annual serious injury and mortality (extrapolated from observer data, 1992-93) of marine mammals incidentally taken in the pair trawl fishery appears to be highly inflated when compared to actual data, leading constituents to suspect that the data used to compile this information were not correct. Data from 1994 should be used in order for the LOF to be based on the best available information. Members of the fishing community have worked to change those aspects of the pair trawl fishery to reduce the number of marine mammal takes that occur incidental to the fishery, and none of those changes will have any significance in this final LOF. It is unfair to impose additional regulations on the fishing community without using every piece of data collected over all the years.

*Response:* See the response to Comment 25 for an explanation of how observer data are extrapolated to provide an annual estimate of the total serious injuries and mortalities of marine mammals in a commercial fishery.

Development of the new fisheries data reporting and analysis systems for the NMFS pair trawl observer program is ongoing. Observed serious injuries and mortalities from the pair trawl fishery in 1994 cannot be extrapolated to total kill numbers until the fishing effort data are available for the calculation. Data from the first half of 1994 were collected but were not available in the form necessary

for the calculations used in developing the proposed LOF and cannot be finalized in time to allow the final LOF to be published before January 1, 1996. These data will be available for future consideration in making any necessary revisions for the next proposed LOF. Although serious injury and mortality of marine mammals incidental to the pair trawl fishery may have been below average in 1994, preliminary analysis of serious injury and mortality levels for 1995 suggests a bycatch increase and indicates an increase in the number of marine mammal species involved.

*Comment 29:* Data on marine mammal incidental mortalities and serious injuries from the 1994 pair trawl fishery have been made available to NMFS through reports and presentations in public forums. Because observer coverage was very high in 1994, this data set represents the most complete information for the pair trawl fishery to date. This information should be used to classify the pair trawl fishery.

*Response:* NMFS agrees that observer coverage was most intensive in 1994. However, incorporation of non-NMFS data presented in the aforementioned report would not result in reclassifying the pair trawl fishery as Category II. For example, if the non-NMFS information on the number of observed mortalities of the offshore stock of bottlenose dolphin and common dolphins are assumed to approximate the actual values, averaging these values with NMFS mortality and serious injury estimates from 1992 and 1993 results in average estimated serious injuries and mortalities of 53 and 22 animals, respectively. Both values exceed 50 percent of the PBR level for these stocks. In addition, the serious injury and mortality levels in 1995 seem to have increased substantially over the 1994 levels. To date, 25 marine mammals have been observed seriously injured or killed, including three dolphin species and long-finned pilot whales. Classifying this fishery as Category I is warranted.

*Comment 30:* In order to categorize a particular fishery, it is imperative that NMFS know how many vessels there are and where they fish. It is incumbent upon NMFS to make this number reflect reality to the best of its ability, because the extrapolation will make an erroneous result that could have extraordinary consequences. For example, for the pelagic longline fishery, NMFS has used 830 vessels to extrapolate the estimate of the "takes" for the fishery. According to the NMFS database, there were only 147 vessels that landed more than one swordfish in each of 5 or more months in 1993.

*Response:* NMFS appreciates the information regarding the total number of participants in the pelagic longline fishery. The numbers in the "Estimated number of vessels/persons" column in the proposed LOF sometimes represented the total number of permitted vessels/persons, and sometimes represented the total number of active vessels/persons. Because the number of active vessels/participants is a more valid indicator of the total effort in a fishery, this was included in the proposed LOF when that information was available. If the number of active participants was not available, the number of, or an estimate of, the permitted participants was used.

The number of vessels in the longline fishery was originally estimated based on the number of swordfish permits issued. There were 361 vessels reporting swordfish catch in 1994. (See response to Comment 25 regarding extrapolation of observer data.)

*Comment 31:* A more appropriate method of calculating effort for the fishery is the number of hooks used. If the reported number of hooks were used for calculating this estimate, NMFS must recognize 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. NMFS should investigate splitting the longline fleet into different statistical areas, preferably using the five areas used by the fisheries statisticians.

It would be especially important to separate the fishery into northern and southern components, as many of the interactions occur in the northern portion of the fishery. For instance, it would be unjustified to severely restrict or close the yellowfin tuna fishery in the Gulf of Mexico if a northern marine mammal stock's PBR is taken. This approach would be consistent with the approach used for some of the Northwest Pacific fisheries that catch the same Pacific species with the same fishing gear but are separately categorized by the bays, inlets, sounds, etc., where they fish. Despite the effort involved to consider the variables and complexity of this fishery, NMFS must not take the "easy" way by leaving this wide-ranging fleet vulnerable to a complete closure that may not be warranted.

*Response:* NMFS agrees that the pelagic longline data should be analyzed to determine whether the fishery could be separated into different statistical areas. The most logical division based on the demographics of the fishery may be into a U.S. Atlantic component and a U.S. Gulf of Mexico

component. This will be investigated during the development of the next proposed LOF.

The Take Reduction Teams that will be established pursuant to the 1994 MMPA amendments will consider all fisheries known to interact with each strategic marine mammal stock. NMFS anticipates that the teams will make recommendations on whether or not to proceed with a geographic partitioning of the fishery. In addition, it does not necessarily follow that the yellowfin tuna fishery in the Gulf of Mexico would be closed if a northern marine mammal stock's PBR is taken. Closures designed to protect marine mammals would most likely be designed to encompass areas where those marine mammals occur. For example, closures restricting groundfish gillnet effort in the Gulf of Maine to reduce porpoise bycatch are designed to encompass areas of high porpoise bycatch, not all areas where gillnetting traditionally occurs.

*Comment 32:* The pelagic longline fishery is classified based on the annual level of serious injury and mortality for pilot whales. The PBR for pilot whales is based upon conservative calculations using dated surveys.

*Response:* The 1995 SARs were prepared using the best available data. Because NMFS conducted surveys in 1995, this information will be incorporated in future calculations of PBR for pilot whale stocks. As both short- and long-finned pilot whales are considered strategic stocks, the SARs addressing these stocks must be reviewed on an annual basis, and new information can be incorporated at that time.

*Comment 33:* Atlantic commercial passenger fishing vessels should be categorized in the LOF to be consistent with the categorization of the Pacific commercial passenger fishing vessels.

*Response:* The 1996 LOF contains a listing of "Atlantic Commercial Passenger Vessel" in Category III. An estimate of 4000 participants is also given.

*Comment 34:* Some fishery names in the proposed LOF are vague. For example, there is a reference to the Atlantic mid-water trawl fishery, which is proposed to include the "Mid-Atlantic squid trawl," and the "Mid-Atlantic mackerel trawl." There is a small amount of mackerel caught by mid-water trawl, but the vast majority of squid are caught using bottom trawl gear.

*Response:* See response to Comment 23 for a discussion of this fishery.

*Comment 35:* The designation of the lobster fishery as Category III should be

revisited, given the interactions of lobster gear with endangered right whales.

*Response:* NMFS will consider proposing to reclassify the lobster fishery as Category II in developing the next proposed LOF. Entanglement records indicate interactions between lobster pot fisheries and right whales, humpback whales, finback whales, and minke whales, but NMFS has no way of extrapolating these reports to the whole fishery.

*Comment 36:* The commenter questioned whether the estimated total take of 1.75 dolphins per year for the Atlantic menhaden fleet justifies classifying this fishery in Category II. Subjecting a fleet of vessels to permitting, decal, and observer requirements in these circumstances appears to be excessive given the size of the interaction and the fact that this particular fishery has been subject to intensive bycatch analysis in the past few years by agency scientists.

*Response:* The bottlenose dolphin takes were incorrectly attributed to the menhaden purse seine fishery. Because of this error, this fishery was inappropriately proposed for classification in Category II in the proposed LOF. This fishery is placed in Category III in this final LOF.

*Comment 37:* The classification of the menhaden purse seine fishery as a Category II fishery is based on a mortality and serious injury rate of 1.75 Atlantic coastal bottlenose dolphins per year in the entire fishery. As stated in the preamble to the proposed LOF, this species does not occur in the Gulf of Maine and therefore "it may be appropriate to separate this fishery into northern and southern components." In view of the absence of bottlenose dolphins from the Gulf of Maine, the menhaden fishery should be separated into two components north and south of Cape Cod, and the Gulf of Maine menhaden purse seine fishery should continue to be classified as a Category III fishery.

*Response:* See response to Comment 36 regarding takes of bottlenose dolphins in the mid-Atlantic component of the menhaden purse seine fishery. However, because of the geographic ranges of the fisheries, the differences in marine mammal species likely to be encountered, and the harvested age-class in the two fisheries, the Gulf of Maine menhaden purse seine and the mid-Atlantic menhaden purse seine are separate fisheries in the final LOF.

*Comment 38:* Serious injuries and mortalities of the western North Atlantic coastal bottlenose dolphin drive the classification of several fisheries (mid-

Atlantic menhaden purse seine, mid-Atlantic coastal gillnet fishery). How is this population defined? Has it been shown to be reproductively isolated from the offshore dolphin stock?

*Response:* The final SAR states that there are "two hematologically and morphologically distinct bottlenose dolphin ecotypes that correspond to a shallow, warm water ecotype and a deep, cold water ecotype . . . ." (Blaylock, *et al.*, 1995).

*Comment 39:* The Gulf of Maine small pelagics surface gillnet fishery should be removed from Category 1. The EA states (p. 30) that this fishery no longer operates.

*Response:* Additional research on the Gulf of Maine small pelagics surface gillnet fishery indicates that, although there are few vessels participating, the fishery is still operational. This fishery operates in areas of high marine mammal concentrations. One report indicated that a white-sided dolphin was killed incidental to this fishery, and another report indicated that a humpback whale became entangled incidental to fishing operations and was later released by divers. Because there was a report of a mortality in this fishery, and because information is not available to justify a placement in Category I or III, the fishery is placed in Category II.

*Comment 40:* There is a small (5 boats) Gulf of Maine midwater trawl fishery for herring, separate from the Category II Atlantic midwater trawl fishery for squid and butterfish (620 boats). It should be listed as a Category III fishery. These boats also fish for herring in southern New England in the winter.

*Response:* In this final LOF, the trawl fishery for Atlantic herring has been renamed the "Northeast U.S. Atlantic Herring Trawl." This fishery is separated from fisheries in the Southern North Atlantic and Gulf of Mexico because the Atlantic herring species only ranges as far south as Cape Hatteras. This fishery is placed in Category III, as no incidental mortalities or serious injuries have been reported for this fishery, nor are incidental mortalities or serious injuries expected to occur incidental to this fishery.

*Comment 41:* A commenter supports placement of new fisheries in Category II until observer data or other information can be used to properly place the fishery, unless information already exists to place a new fishery in a different category.

*Response:* NMFS agrees. This approach was included in the final regulations implementing section 118.

*Comment 42:* According to the proposed LOF, the U.S. mid-Atlantic coastal gillnet fishery interacts with humpback whales (PBR level = 1). Published data indicate that stranded humpback whales in the mid-Atlantic may be interacting at a significant rate with these fisheries (Wiley *et al.*, 1995). This information indicates that this fishery should be classified as Category I, as it may be responsible for greater than 1 percent of the annual mortality in this stock of humpbacks.

*Response:* The PBR level for this humpback whale stock is currently set at 10 animals. The stranding records mentioned in Wiley (1995) demonstrate that stranded humpbacks in the mid-Atlantic have been entangled in commercial fishing gear. However, none of those humpback stranding records conclusively identify which fishery is responsible. One of the fundamental problems with linking a large whale entanglement to a particular fishery is that the whales are capable of carrying many kinds of gear great distances from the original point of entanglement. Reports received usually do not include gear identification information that would identify the location in which the gear was originally set.

Recent cetacean entanglement records in the mid-Atlantic have been linked to this fishery. These records suggest that, although the level of humpback entanglement in coastal gillnets in the mid-Atlantic is greater than 1 percent of PBR, there is no evidence to suggest that it is greater than 50 percent of PBR. Therefore, classification of this fishery as Category I is not warranted at this time.

*Comment 43:* There is no mention of interactions with northern right whales in the U.S. South Atlantic shark gillnet fishery. State officials concluded that a juvenile right whale that was entangled in netting that likely came from this fishery was subsequently killed by a large ship in 1994. Right whales should be added as an interacting stock and this fishery should be classified as a Category I fishery.

*Response:* A seriously injured juvenile right whale was observed swimming with its mother off the coast of Georgia. Marks on the animal closely resembled the types of marks observed on other right whales that have been entangled in gill nets. The juvenile whale had apparently also been hit by the propellers of a ship, as its flukes had been nearly severed. No gear was recovered from this animal and it is unknown whether the animal actually died, although its demise was highly likely based upon its injuries. The only gillnet fishery operating in the vicinity

was the Southeast U.S. Atlantic shark gill net fishery. Because this fishery's interaction with right whales is suspected but not confirmed, it is appropriate to place this fishery in Category II.

*Comment 44:* The North Atlantic bottom trawl fishery was classified as a Category III fishery despite observer data indicating a take of 62 percent of the PBR for striped dolphins. It is noted that there was minimal observer coverage (1 percent) and there is, therefore, a high coefficient of variation of the estimate. It is also possible with this high coefficient of variance that the mortality estimate is low. Furthermore, text in the proposed LOF states that the observers were not assigned to monitor marine mammal mortality but to "monitor fishery management related issues." Similar observer objectives on the Gulf of Maine gillnet vessels resulted in an underestimate of marine mammal bycatch. NMFS should reconsider the category for this fishery.

*Response:* A justification for categorizing the North Atlantic bottom trawl fishery in Category III was provided in the proposed LOF. Although concerns regarding some observer programs that focus on fishery monitoring have been raised, other observer programs with the same goals, such as those operating in the BSAI groundfish trawl fishery and the U.S. Atlantic large pelagics drift gillnet fishery, have provided important information on the level of marine mammal incidental serious injury and mortality. NMFS anticipates receiving additional marine mammal bycatch information on the bottom trawl fishery from observer programs directed at fish bycatch. This fishery will be re-evaluated for potential listing in Category II in a future proposed LOF. The trawl and gillnet fisheries have very different methods for hauling the gear and removing catch from the gear. It is much less likely that an observer will miss a marine mammal from a trawl haul than from a gillnet haul.

*Comment 45:* It may be premature to place the finfish aquaculture fishery in Category III based on a presumption that, since intentional killing is now prohibited, participants will not shoot seals. Media accounts of fishers shooting hundreds of seals belie the NMFS contention that the industry is likely to stop killing seals (justifying reclassification from Category II to Category III). Thus, the fishery should remain in Category II.

*Response:* The finfish aquaculture fishery was placed in Category II in the previous LOF, because intentional lethal takes of harbor seals and grey seals were

thought to occur "occasionally." The authority to intentionally kill the seals was revoked by the 1994 MMPA amendments. A fishery categorization under section 118 cannot be based on the supposition that aquaculturists will violate the law. Anyone who intentionally kills marine mammals to protect fishing gear or catch will be subject to enforcement actions. This fishery will be re-evaluated in developing a future proposed LOF based on recent seal entanglement records from the fishery.

*Comment 46:* The Gulf of Mexico inshore gillnet fishery has not been classified correctly. There are over 40 discrete stocks of bottlenose dolphins in the Gulf of Mexico bay, sound and estuarine stocks, each with a PBR of between 0 and 3 animals per year. If this fishery were to be classified based on analogy to U.S. inshore fisheries in the mid-Atlantic, then it must be supposed that it is likely to interact with bottlenose dolphins (see Long Island sound inshore gillnet, Delaware Bay inshore gillnet and North Carolina inshore gillnet). As such, this fishery should be either a Category I or II fishery, as it would have to kill 0.03 animals per year or less to be placed in Category III if it is operating in an area coincident with any of the Gulf bays stocks. If this fishery is not operating in bays, sounds and estuaries (as could be the case in an "inshore" fishery) and is instead interacting with coastal stocks, then the PBR for the Western Gulf of Mexico coastal stock is 29 animals (0.2=1 percent of PBR); the PBR level for the northern Gulf of Mexico coastal stock is 35 (0.3=1 percent of the PBR level); and the PBR level for the Eastern Gulf of Mexico coastal stock is 89 (0.8=1 percent of the PBR level). Thus, the fishery would have to kill less than one of these animals each year in order to properly be placed in Category III. This too appears unlikely, given the propensity of gillnets to interact with bottlenose dolphins. It would seem that this fishery is totally inappropriate for Category III. This new fishery should be either Category I or Category II based on its potential to interact with bottlenose dolphins.

*Response:* Because NMFS has no documented, direct observations of serious injury or mortality to marine mammals in this fishery, it has been classified as category III by analogy with Atlantic inshore gillnet fisheries. However, as explained under responses to comments on those fisheries, NMFS believes there is potential for interaction with marine mammals in this fishery. Several bottlenose dolphins were incidentally caught in research-related

tangle nets set for turtles between Texas and Louisiana between 1993 and 1995. These nets are similar to, and used like nets used in the inshore gillnet fishery. In addition, these nets were fully tended specifically to prevent marine mammal entanglements from occurring. This information and any additional information that can be obtained with respect to this fishery may be considered in developing a future proposed LOF.

*Comment 47:* The offshore monkfish bottom gillnet fishery, a new fishery to the proposed LOF for 1996, was placed in Category III based on an expectation that there will be a remote likelihood of interactions between bottom gillnet gear and marine mammals. While it is true that deep-set gear is less likely to kill marine mammals, a number of stocks (e.g., sperm whales) do use deep water areas, and gillnets are the gear type most likely to interact with any marine mammal species in the area. Until such time as it can be ascertained that interactions are unlikely, this new fishery should be placed in Category II to allow observer coverage and the gathering of more reliable information on interactions.

*Response:* This fishery may have been listed incorrectly as Category III in the proposed LOF. Because this fishery may have a high potential to take several cetacean species based on analogy with other shelf-edge fisheries such as the large pelagic drift gillnet fishery, NMFS will examine available data during the development of the next proposed LOF for reclassification of this fishery as Category II.

Since the publication of the proposed LOF, two other components of the monkfish fishery have been recognized by NMFS. The following provides a description of each component, and its treatment in this final LOF:

#### U.S. Atlantic Monkfish Trawl Fishery, Unknown Number of Participants

The monkfish trawl fishery harvests monkfish in deep waters off the Atlantic coast. Some participants in this fishery use a modified beam trawl; most use otter trawls. In addition, some participants in the scallop dredge fishery target monkfish using dredge gear during off-days for scallops as well as simultaneously with scallops. Because the target species, gear type, and geographic range of this fishery is unique, it is considered a new fishery for the purposes of the LOF. There are no documented reports of incidental serious injury or mortality of marine mammals in this fishery, nor are incidental serious injuries or mortalities

expected. Accordingly, this fishery is placed in Category III in this final LOF.

#### Monkfish Gillnetting in the Gulf of Maine

Fishers participating in the New England multispecies sink gillnet fishery have targeted monkfish for several years. When targeting this species, a large mesh (10–14" stretched mesh) sink gillnet is used, and the net is either tied down, or is set upright without floats using a polyfoam core floatline. Reports indicate that at least some fishers target monkfish in the Gulf of Maine near Jeffrey's Ledge. This fishery is an extension of the New England multispecies sink gillnet fishery, but has not been specifically included in the name of the fishery. Because of the increasing dominance of monkfish in the groundfish catch, the name of the New England multispecies sink gillnet fishery has been changed to the "New England multispecies sink gillnet fishery (includes all species as defined in the Multispecies FMP, spiny dogfish, and monkfish)" to clarify that sink gillnet fishers targeting monkfish are included.

*Comment 48:* The Gulf of Maine, U.S. mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon fishery is stated to have no documented interactions with marine mammals. This is incorrect. For example, NMFS records indicate that, on September 1, 1986 a humpback whale was reported by the U.S. Coast Guard off Nantucket shoals with tuna floats trailing; on November 14, 1986, the U.S. Coast Guard reported to NMFS that a right whale calf was seen with "a tuna dart with line attached" in its body; on July 7, 1989, a humpback whale was reported by the Cetacean Research Unit in Gloucester, MA, to have a tuna line from an identified Gloucester-based tuna boat around its left flipper and flukes, with the float attached. Furthermore, on August 29, 1995, a humpback whale was observed by both whale watching boats and the U.S. Coast Guard on Jeffreys Ledge, with a tuna boat anchor, line and float wrapped around and trailing from its body. While this most recent sighting may not yet have appeared in the main data base, the three earlier reports are from NMFS files. This information should be corrected in the LOF, and this fishery should be considered for reclassification.

*Response:* Because NMFS chose to use the most current data available, entanglement references prior to the Marine Mammal Exemption Program (MMEP) inception in 1989 were not used in developing the proposed LOF. This fishery may be considered for re-

classification in Category II in a future proposed LOF based on recent entanglement records. A humpback entanglement in tuna hand gear was conclusively identified in 1995, and the recent references presented in Comment 47, along with additional records, may be used to support this re-classification.

*Comment 49:* NMFS entanglement reports indicate that a number of animals have been seen entangled in trawl gear from an unspecified fishery. On February 15, 1983, a right whale calf was reported dead in an otter trawl, on February 23, 1986, a humpback whale was reported by the Cetacean Research Unit off Jeffreys Ledge "caught in otter trawl," and on September 18, 1989, the Marine Mammal Stranding Center in New Jersey reported a failed attempt to rescue a humpback whale from trawl net and cable. Either the Gulf of Maine mackerel trawl or the mid-Atlantic multi-species trawl, or another trawl fishery operating in the area is apparently having interactions with endangered species. Thus, it may not be accurate to say that these fisheries have no documented interactions.

*Response:* The right whale calf entangled in otter trawl gear in 1983 was determined to have been dead and decomposed prior to this observation and should therefore not be attributed to the otter trawl fishery. The February 23, 1986 report of a humpback in an otter trawl was an incomplete report. The whale was still alive, but it is likely that the whale was weakened by a previous entanglement, a vessel collision, or other injury or disease. The carcass was not recovered, so no conclusions can be drawn from this incident. The September 18, 1989, entanglement of a humpback in trawl gear in New Jersey was not conclusively linked to the specific trawl type, and there was no information obtained that would give a location for the original point of entanglement. Because the fishery that caused the above entanglements cannot be specifically identified, the information may not be used to classify fisheries at this time.

*Comment 50:* It is stated that the Gulf of Maine, U.S. mid-Atlantic offshore lobster trap/pot fishery has no documented interactions. This is incorrect. A right whale, which washed up dead this summer (1995) in Rhode Island, was found with line from offshore lobster gear wrapped so tightly around its flippers, that it cut through the bone and likely contributed to the animal's death. In addition, a NMFS report from April 25, 1981, states that a minke whale was found entangled in offshore lobster gear and released on

April 28, 1981. Thus, it can be seen that this fishery does have interactions.

*Response:* Because NMFS chose to use the most current data available, entanglement references prior to the MMEP program inception in 1989 were not used in developing the current proposed LOF. These records may be considered in developing a future proposed LOF. The right whale that stranded in Rhode Island in July of 1995 had been entangled as early as December 1993, although the original point of entanglement is unknown. Although entanglement experts on-scene believed that the gear on the whale was probably offshore lobster gear, this could not be confirmed because no identification unique to this fishery was recovered. NMFS also anticipates that both inshore and offshore lobster fisheries may be considered by the Take Reduction Team that will be established to make recommendations to NMFS on reducing interactions between fisheries and large cetaceans.

*Comment 51:* A number of fisheries have had species of marine mammals listed as interacting species, based on analogy to similar fisheries that have interactions with marine mammal species known to occur in the area. The U.S. mid-Atlantic mixed species stop seine/weir fishery should therefore not have its interactions reported as "none documented." Seines and weirs pose a significant interaction problem for a number of species of marine mammals. For instance, in 1981 a humpback whale was reported caught in a cod weir in Long Island and released by the Okeanos Research Center. In 1988, a weir in Truro, MA, caught two humpbacks: one on October 16 and one on December 6. Both animals were released by the Center for Coastal Studies. Furthermore, there is no justification for assuming that this fishery's interaction potential is significantly different than that of the Gulf of Maine herring and Atlantic stop seine/weir fishery, which has humpback, right whale, minke whale and harbor porpoise interactions. The final LOF should include these corrections.

*Response:* The entanglement records mentioned by the commenter were not considered for the proposed LOF. These records and any records received since the development of the proposed LOF may be considered while developing a future proposed LOF. In general, NMFS believes that potential for serious injury or mortality due to these fisheries is low.

*Comments on Fisheries in the Southwest Region*

*Comment 52:* Reclassify the California (CA) set/drift gillnet fisheries that use small mesh to Category II based on takes of central California harbor porpoise.

*Response:* California gillnet fisheries that use a mesh size of 3.5 inches or less target white croaker, bonito, flying fish, herring, smelt, shad sturgeon, bottomfish, mullet, perch, and rockfish. There have been no observed or reported incidental takes of central California harbor porpoise, or any marine mammal, in these fisheries. In addition, no mention of central California harbor porpoise mortalities or serious injuries in the small mesh gillnet fisheries were made in the final SAR. Due to the small mesh size used in this fishery, the likelihood of incidental marine mammal mortality and serious injury is very low. For these reasons, this fishery is placed in Category III.

*Comment 53:* Reclassify the CA herring, sardine, and squid purse seine fisheries into Category II, because the interactions are similar to those that occur in the CA anchovy, mackerel, and tuna purse seine fishery.

*Response:* The CA anchovy, mackerel, and tuna purse seine fishery has been classified as Category II, because mortality and serious injury of the offshore bottlenose dolphin stock across all fisheries is greater than 10 percent of this stock's PBR level, and the estimated annual average mortality and serious injury of this stock in the CA anchovy, mackerel, tuna purse seine fishery is 2 percent of this stock's PBR level. At this time, there are no data indicating that the herring, sardine, and squid purse seine fisheries have similar incidental serious injury and mortality rates to the anchovy, mackerel, and tuna purse seine fishery. For these reasons, the herring, sardine, and squid purse seine fisheries are placed in Category III.

*Comment 54:* Hawaii (HI) lobster trap/crab trap fishery should be considered to interact with humpback whales based on analogy with interactions between trap fisheries and large cetaceans on the U.S. Atlantic coast.

*Response:* There is no evidence to indicate that humpback whales interact with this fishery in Hawaii. Because there is no evidence of incidental mortality or serious injury of humpback whales, or other marine mammals in this fishery, this fishery is placed in Category III.

Changes from the Proposed LOF

The following is a list of other changes that have not been discussed in

the preamble or response to comments section, or that were made for editorial consistency:

*Marine mammal species list.* According to statute, the LOF must include a description of the marine mammal stocks that interact with each commercial fishery. The proposed LOF included marine mammals that are known, reported, or strongly suspected to be injured, killed, entangled, or harassed in a particular commercial fishery. All marine mammals listed as interacting with a particular commercial fishery in the 1994 LOF were also included. In this final LOF, the list of marine mammals specified as interacting with commercial fisheries is limited to those that have had documented incidental injuries or mortalities in commercial fisheries between 1989 and 1995. Information from observer programs, logbook data, stranding reports, and anecdotal reports were used to develop the species list. In addition, the names of the marine mammal species/stock involved are listed instead of a code.

*Alaskan Bering Sea and Aleutian Islands groundfish trawl fishery.* This fishery was proposed to move from Category III to Category II in the proposed LOF based on the serious injury and mortality of killer whales that is over 50 percent of the PBR. However, because the population estimates of both the resident and transient stocks of killer whales are known to be biased low, and because NMFS has good estimates of the level of mortality and serious injury in this observed fishery, this fishery will be placed in Category III.

*AK southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska sablefish longline/set line (federally regulated waters).* This fishery was placed in Category II in the 1994 LOF and was proposed to remain in Category II in the proposed LOF. The proposed classification was based on an annual level of serious injury and mortality of both the resident and transient stocks of killer whales that is greater than 10 percent of the PBR level for all fisheries, and greater than 1 percent of the PBR level for this fishery. However, because the population estimates of both the resident and transient stocks of killer whales are known to be biased low, this fishery is placed in Category III.

*Mid-Atlantic Menhaden Purse Seine.* This fishery was erroneously proposed to be placed in Category II in the proposed LOF, because incidental takes of bottlenose dolphins that occurred in the Gulf of Mexico menhaden purse seine were attributed to the Mid-Atlantic menhaden purse seine. This

error has been corrected, and the Mid-Atlantic menhaden purse seine is placed in Category III in this final LOF.

*Gulf of Maine small pelagics surface gillnet.* This fishery was identified in Category I in the 1994 LOF, and was proposed to remain in Category I in the proposed LOF, based on a lack of available information that could be used to place the fishery in a different category. Because only two reports of serious injury and mortality of marine mammals incidental to this fishery have been reported, Category I is not warranted. Thus, this fishery has been placed in Category II.

Occasional anecdotal reports of mortalities and injuries of marine mammals incidental to this fishery have been reported. Because there have been reports of mortalities in this fishery, it will be placed in Category II.

*Atlantic squid, mackerel, butterfish trawl.* The name of this fishery was the "Atlantic mid-water trawl" in the proposed LOF. In the proposed LOF, this fishery was defined as including those mid-water trawlers that target fish managed by the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). Because both mid- and bottom-trawl gear are used to harvest squid, the name of this fishery has been changed to reflect the target species in lieu of the technique. Thus, this fishery is now called the "Atlantic squid, mackerel, butterfish trawl" in the final LOF.

*Atlantic Ocean, Gulf of Mexico large pelagics drift gillnet fishery.* The name of this fishery was the "Atlantic Ocean, Caribbean, Gulf of Mexico swordfish, tuna, shark drift gillnet" in the proposed LOF. The name of this fishery has been changed in the final LOF because the species targeted in this fishery have changed in the past and may change in the future.

*U.S. Atlantic large pelagics pair trawl.* The name of this fishery was proposed as the "Atlantic Ocean, Caribbean, Gulf of Mexico Swordfish, Tuna, Shark Pair trawl" in the proposed LOF. The name has been changed in the final LOF to encompass all large pelagic species targeted using this gear.

*Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.* The name of this fishery was proposed as the "Atlantic Ocean, Caribbean, Gulf of Mexico tuna, shark, swordfish longline" in the proposed LOF. The name has been changed in the final LOF to encompass all large pelagic species targeted using this gear.

To remain consistent throughout the United States, the Atlantic Ocean, Gulf of Mexico, and Caribbean commercial passenger fishing vessel fishery has

been added to the LOF. This fishery is placed in Category III, because there are no documented or suspected serious injuries or mortalities of marine mammals incidental to this fishery.

*Number of participants in commercial fisheries.* The LOF tables include estimates of the number of participants in each commercial fishery. Comments were received updating the number of participants in certain commercial fisheries, and these updates are reflected in Tables 1 and 2. The number of participants was updated for the following fisheries: Gulf of Mexico menhaden purse seine, Florida west coast purse seine, Southeast U.S. Atlantic, Gulf of Mexico snapper-grouper and other reef fish bottom longline/hook&line, and the Southeast U.S. Atlantic, Gulf of Mexico, Caribbean spiny lobster trap/pot.

All occurrences of "South Atlantic" in the fishery names in the LOF have been changed to "Southeast U.S. Atlantic" to more appropriately designate the geographic location of the commercial fisheries as occurring in southern U.S. waters and not south of the equator.

"Weakfish, mullet, spot, croaker" were added to the list of target species in the "Gulf of Mexico inshore gillnet" fishery to better reflect the nature of the fishery.

The name of the Gulf of Maine, South Atlantic coastal shad, sturgeon gillnet has been changed to "Gulf of Maine, Southeast U.S. Atlantic coastal shad, sturgeon gillnet fishery" to better reflect the geographical range of this fishery, and to specifically include the waters of North Carolina.

The Gulf of Mexico, Southeast U.S. Atlantic coastal gillnet (includes mullet gillnet fishery in Louisiana and Mississippi) fishery has been separated into a Gulf of Mexico component and a Southeast U.S. Atlantic coastal gillnet, because the marine mammal stocks with which the fisheries interact are different.

The Florida mullet gillnet fishery has been removed from the LOF. This fishery no longer operates due to the net ban in Florida state waters. Some participants in this fishery have moved their operations to Louisiana and Mississippi; thus, the phrase "includes mullet gillnet fishing in LA and MS" has been added to the name of the Southeast U.S. Atlantic, Gulf of Mexico coastal gillnet fishery.

## Responses to Comments

## 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 for only those fisheries placed in Category I and II, or those fisheries placed in Category III for which observer, logbook, stranding or other information exist. The evaluation of each fishery at both the Tier 1 (total, species-specific marine mammal serious injuries and mortalities across all fisheries) and the Tier 2 (fishery-specific incidental marine mammal serious injury and mortality) levels is provided.

## Commercial Fisheries in the Pacific Ocean

## Category I

## CA Angel Shark/Halibut and Other Species Using Large Mesh (&gt;3.5 inches) Set Gillnet Fishery

*Tier 1 evaluation:* Based on observer data and fishing effort during 1991–93 (Barlow *et al.*, 1994, NMFS 1995), annual mortality and serious injury of the central California harbor porpoise across all fisheries, including the California angel shark/halibut large-mesh set gillnet fishery, exceeds 10 percent of this stock's PBR level.

*Tier 2 evaluation:* The CA angel shark/halibut large-mesh set gillnet fishery is responsible for an estimated annual removal level of 50 percent or more of the Central California harbor porpoise's PBR level. CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery

*Tier 1 evaluation:* Based on observer data and fishing effort during 1991–93 (Barlow *et al.*, 1994, NMFS 1995), total annual mortality and serious injury of sperm whales across all fisheries, including the CA/OR drift gillnet fishery, exceeds 10 percent of this stock's PBR level.

*Tier 2 evaluation:* The CA/OR thresher shark/swordfish drift gillnet fishery is responsible for an estimated annual removal level of 50 percent or more of the CA/OR/WA sperm whale stock's PBR level.

## Category II

## AK Prince William Sound Salmon Drift Gillnet

*Tier 1 evaluation:* Total known harbor porpoise mortality and serious injury levels across all fisheries exceed 10 percent of the stock's PBR level.

*Tier 2 evaluation:* Known harbor porpoise mortality and serious injury in this fishery exceed 1 percent of the stock's PBR.

## AK Peninsula/Aleutian Islands Salmon Drift Gillnet

*Tier 1 evaluation:* Total known harbor porpoise mortality and serious injury levels across all fisheries exceed 10 percent of the stock's PBR level.

*Tier 2 evaluation:* Known harbor porpoise mortality and serious injury in this fishery exceed 1 percent of the stock's PBR level.

## AK Peninsula/Aleutian Island Salmon Set Gillnet

*Tier 1 evaluation:* Total known marine mammal mortality and serious injury levels across all fisheries does not exceed 10 percent of each stock's PBR level based on the current information. Low levels of observer coverage have been inadequate to determine mortality and serious injury levels for these stocks across all fisheries, and available data suggest that levels of mortality and serious injury may exceed 10 percent of some stocks' PBR levels if observer information were available, especially for harbor porpoise and Steller sea lions.

*Tier 2 evaluation:* Low levels of marine mammal mortalities and serious injuries have been documented for this fishery. This fishery has not been observed, and because levels of marine mammal mortalities and serious injuries in this fishery are expected to be similar to levels of other set gillnet fisheries that interact with similar marine mammal species, especially for harbor porpoise, this fishery is placed in Category II.

## Southeast Alaska Salmon Drift Gillnet

*Tier 1 evaluation:* Total known harbor porpoise and humpback whale mortality and serious injury levels across all fisheries exceed 10 percent of each stock's PBR level.

*Tier 2 evaluation:* Known harbor porpoise and humpback whale mortality and serious injury levels in this fishery exceed 1 percent of each stock's PBR level.

## AK Cook Inlet Drift Gillnet

*Tier 1 evaluation:* Total known marine mammal mortality and serious injury levels across all fisheries do not exceed 10 percent of the PBR of each stock taken by this fishery with currently available information. Low levels of observer coverage have been inadequate to determine mortality and serious injury levels for these stocks across all fisheries, and available data suggest that levels of mortality and serious injury may exceed 10 percent of

some stocks' PBRs if observer information were available.

*Tier 2 evaluation:* Low levels of marine mammal mortalities and serious injuries have been documented for this fishery. Low levels of observer coverage have been inadequate to determine mortality and serious injury levels for these stocks, and available data suggest that levels of mortality and serious injury may exceed 1 percent of some stocks' PBR levels if observer information were available. Levels of marine mammal mortalities and serious injuries in this fishery are expected to be similar to levels of other drift gillnet fisheries that interact with similar marine mammal species.

## AK Cook Inlet Salmon Set Gillnet

*Tier 1 evaluation:* Total known marine mammal mortality and serious injury levels across all fisheries do not exceed 10 percent of each stock's PBR level with the current information. Low levels of observer coverage have been inadequate to determine mortality and serious injury levels for these stocks across all fisheries, and available data suggest that levels of mortality and serious injury may exceed 10 percent of some stocks' PBR levels if observer information were available, especially for harbor porpoise.

*Tier 2 evaluation:* Low levels of marine mammal mortalities and serious injuries have been documented for this fishery. Low levels of observer coverage have been inadequate to determine mortality and serious injury levels for these stocks, and available data suggest that levels of mortality and serious injury may exceed 1 percent of some stocks' PBR levels if observer information were available. Levels of marine mammal mortalities and serious injuries in this fishery are expected to be similar to levels of other set gillnet fisheries that interact with similar marine mammal species, especially for harbor porpoise.

## AK Yakutat Salmon Set Gillnet

*Tier 1 evaluation:* Total known harbor seal mortality and serious injury levels across all fisheries do not exceed 10 percent of the stock's PBR level with the current information. Low levels of observer coverage have been inadequate to determine mortality and serious injury levels for these stocks across all fisheries, and available data suggest that levels of mortality and serious injury may exceed 10 percent of some stocks' PBR levels if observer information were available.

*Tier 2 evaluation:* Known harbor seal mortality and serious injury levels

exceed 1 percent of the stock's PBR level.

#### AK Kodiak Salmon Set Gillnet

*Tier 1 evaluation:* Total known harbor porpoise mortality and serious injury levels across all fisheries exceed 10 percent of the stock's PBR level.

*Tier 2 evaluation:* Known harbor porpoise mortality and serious injury levels in this fishery exceed 1 percent of the stock's PBR level.

#### AK Bristol Bay Drift Gillnet

*Tier 1 evaluation:* Total known harbor seal and beluga whale mortality and serious injury levels across all fisheries do not exceed 10 percent of each stock's PBR level with the current information. Low levels of observer coverage have been inadequate to determine mortality and serious injury levels for these stocks across all fisheries, and available data suggest that levels of mortality and serious injury may exceed 10 percent of some stocks' PBR levels if observer information were available.

*Tier 2 evaluation:* Known harbor seal and beluga whale mortality and serious injury levels exceed 1 percent of each stock's PBR level.

#### AK Bristol Bay Set Gillnet

*Tier 1 evaluation:* Total known marine mammal mortality and serious injury levels across all fisheries do not exceed 10 percent of each stock's PBR level with the current information. Low levels of observer coverage have been inadequate to determine mortality and serious injury levels for these stocks across all fisheries, and available data suggest that levels of mortality and serious injury may exceed 10 percent of some stocks' PBR levels if observer information were available, especially for harbor porpoise, harbor seals and Steller sea lions.

*Tier 2 evaluation:* Low levels of marine mammal mortalities and serious injuries have been documented for this fishery. Low levels of observer coverage have been inadequate to determine mortality and serious injury levels for these stocks, and available data suggest that levels of mortality and serious injury may exceed 1 percent of some stocks' PBR levels if observer information were available. Levels of marine mammal mortalities and serious injuries in this fishery are expected to be similar to levels of other set gillnet fisheries that interact with similar marine mammal species, especially for harbor porpoise, harbor seals and Steller sea lions.

#### AK Metlakatla/Annette Island Salmon Drift Gillnet

This fishery is separated from the Southeast drift gillnet fishery only for purposes of registration. It is a tribal fishery and is thus exempt from the registration fee. For categorization purposes, it is considered the same as the Southeast drift gillnet fishery.

WA Puget Sound Region Salmon Drift Gillnet (Includes All Inland Waters South of the US-Canada Border and Eastward of the Bonilla-Tatoosh Line—Treaty Indian Fishing is Excluded)

*Tier 1 evaluation:* As reported in the final SAR, the estimated total fishery-related mortality for the inland Washington stock of harbor porpoise (16), exceeds 10 percent of the calculated PBR level (2.7) and, therefore, can not be considered insignificant.

*Tier 2 evaluation:* The reported incidental take estimate of 15 harbor porpoise per year was calculated from observed take in the sockeye salmon fishery. However, that estimate includes Treaty Indian fishing effort, which constitutes about one half of the effort in Puget Sound. Therefore, the estimated take of harbor porpoise for the non-tribal salmon drift gillnet fishery would be about one half of the total estimated take (7.5), which is greater than 1 percent but less than 50 percent of the calculated PBR level for this stock.

#### CA Anchovy, Mackerel, Tuna Purse Seine

*Tier 1 evaluation:* Based on observer data and fishing effort during 1991–93 and logbook data (1990–92) (Barlow *et al.*, 1995, NMFS 1995), the average annual mortality and serious injury of the offshore bottlenose dolphin across all fisheries, including the CA anchovy, mackerel, tuna purse seine fishery, exceeds 10 percent of this stock's PBR levels.

*Tier 2 evaluation:* The mortality and serious injury of the offshore bottlenose dolphin in the CA mackerel, anchovy, tuna purse seine fishery is two percent of this stock's PBR level.

#### AK Southeast Salmon Purse Seine

*Tier 1 evaluation:* Total known humpback whale mortalities and serious injuries across all fisheries exceed 10 percent of the stock's PBR level.

*Tier 2 evaluation:* Known humpback whale mortalities and serious injuries in this fishery exceed 1 percent of the stock's PBR level.

#### AK pair trawl

This is a new fishery in Alaskan waters and is therefore categorized by analogy with pair trawl fisheries in the U.S. North Atlantic. The U.S. North Atlantic large pelagics pair trawl fishery has demonstrated high levels of mortalities and serious injury for some marine mammal species. The Alaska pair trawl fishery is classified as Category II pending additional information on the level of marine mammal serious injuries and mortalities in the fishery.

#### OR Swordfish/Blue Shark Surface Longline

Categorization of this fishery is based on analogy with observed pelagic longline fisheries in the Atlantic Ocean. Based on observer data, the Atlantic Ocean pelagic longline fishery for swordfish and tuna has at least an occasional incidental serious injury and mortality of marine mammals. Accordingly, this fishery is placed in Category II.

#### Category III

#### AK Prince William Sound Set Gillnet

*Tier 1 evaluation:* Total known harbor seal and Steller sea lion mortality and serious injury levels across all fisheries do not exceed 10 percent of each stock's PBR level with the current information. Low levels of observer coverage have been inadequate to determine mortality and serious injury levels for these stocks across all fisheries, and available data suggest that levels of mortality and serious injury may exceed 10 percent of these stocks' PBR levels if observer information were available.

*Tier 2 evaluation:* Marine mammal mortality and serious injury levels approaching 1 percent are not expected for any stock by this fishery.

#### AK Kuskokwim, Yukon, Norton Sound, Kotzebue Salmon Gillnet

Interactions in these fisheries usually result in directed takes of marine mammals for subsistence purposes.

#### AK Roe Herring and Food/Bait Herring Gillnet

*Tier 1 evaluation:* No marine mammal serious injuries or mortalities have been documented incidental to this fishery.

*Tier 2 evaluation:* Although marine mammal mortalities and serious injuries have been documented for other gillnet fisheries, the roe herring gillnet fishery opens are of such short duration, marine mammal mortality and serious injury levels approaching 1 percent are not expected for any stock for this fishery.



## WA Willapa Bay Drift Gillnet

*Tier 1 evaluation:* The estimated total fishery related mortality and serious injury for the Oregon and Washington coastal stock of harbor seals is greater than 10 percent of the PBR level.

*Tier 2 evaluation:* No harbor seal mortalities were observed incidental to fishing effort in 1991. However, harbor seals did interact with the fishery. Two incidents of entanglement were observed in which the seals were released alive and uninjured. Based on observer data, incidental mortality was estimated to be a rare event which would not exceed 1 percent of the calculated PBR level for this stock.

## WA Gray's Harbor Salmon Drift Gillnet (Excluding Treaty Tribal Fishing)

*Tier 1 evaluation:* As reported in the final SAR, the estimated total fishery related mortality and serious injury for the Oregon & Washington coastal stock of harbor seals (233) is greater than 10 percent of the PBR level (170).

*Tier 2 evaluation:* The reported estimate of annual mortality and serious injury of harbor seals in this fishery (10), based on observer data, is less than 1 percent of the calculated PBR level for the stock (17).

## WA, OR Lower Columbia River (Includes Tributaries) Drift Gillnet

*Tier 1 evaluation:* The estimated total fishery related mortality and serious injury for the Oregon and Washington coastal stock of harbor seals (233) is not less than 10 percent of the PBR level (170).

*Tier 2 evaluation:* Based on observations in 1991–92, the estimated annual mortality and serious injury of harbor seals in this fishery is 213. However, during the observation period, all but one of the observed mortalities occurred during the winter season. The extrapolated annual mortality of harbor seals in this fishery from 1991 to 1993 was 233 seals in 1991 (all during the winter season), 192 seals in 1992 (180 in the winter season and 12 in the fall), and 11 seals in 1993 (all during the winter season). Although the estimated annual mortalities of harbor seals in 1991 and 1992 could justify placing this fishery in Category II, reduced fishing seasons and or season closures (due to restrictions on the fishery to minimize impacts on Snake River chinook salmon, which are listed under the Endangered Species Act (ESA)) are unlikely to result in the levels of harbor seal mortality observed in 1991 and 1992. The winter season of 1993, when an estimated 11 harbor seals were taken, was restricted due to ESA

considerations. The winter season was closed in 1994. The estimated annual harbor seal mortality for the fall fishery,  $4(0+11+0/3=3.66)$  is less than 1 percent of the calculated PBR level for this stock (17).

## CA Set and Drift Gillnet Fisheries That Use a Stretched Mesh Size of 3.5 Inches or Less

*Tier 1 evaluation:* Based on logbook data (1991–1994) (NMFS 1995, Joe Cordaro, pers. com., SWO, NMFS), no annual mortality and serious injury of marine mammals has been reported in the CA set and drift gillnet fishery with small mesh.

## AK Miscellaneous Finfish Set Gillnet

*Tier 1 evaluation:* No marine mammal serious injuries or mortalities have been documented incidental to this fishery.

*Tier 2 evaluation:* Marine mammal mortality and serious injury levels approaching 1 percent are not expected for any stock by this fishery.

## HI Gillnet

*Tier 1 evaluation:* One bottlenose dolphin was reported entangled in a gill net in 1991 (Nitta and Henderson 1993); however, bottlenose dolphins are rarely reported as entangled in set gillnets in Hawaii. There are records of spinner dolphins being taken in nets or net fragments in Hawaiian waters, and one eyewitness account in 1990. There has been one reported incidental mortality of a Hawaiian monk seal in an inshore gillnet in 1976 (Barlow *et al.*, 1995). Due to the rarity of these interactions, this fishery is placed in Category III.

## CA Herring Purse Seine

*Tier 1 evaluation:* Based on logbook data (1990–94) (Joe Cordaro, pers. comm.) the total mortality and serious injury of the CA coastal bottlenose dolphins across all fisheries, including the CA herring purse seine fishery, is less than 10 percent of this stock's PBR level (Barlow *et al.*, 1995).

## CA Sardine Purse Seine

*Tier 1 evaluation:* Based on logbook data (1990–1992), no mortality or serious injury has been reported in this fishery.

## CA Squid Purse Seine

*Tier 1 evaluation:* Based on logbook data (1990–92), the total annual average mortality and serious injury of California sea lions across all fisheries, including the squid purse seine fishery, exceeds 10 percent of this stock's PBR level.

*Tier 2 evaluation:* The total annual average mortality and serious injury of

California sea lions in the CA squid purse seine fishery is less than one percent of this stock's PBR level.

## CA Squid Dip Net

*Tier 1 evaluation:* Based on logbook data (1990–1992), no mortality or serious injury has been reported in the CA squid dip net fishery.

## WA, OR Salmon Net Pens

*Tier 1 evaluation:* As reported in the final SAR, the total estimated fishery related mortality and serious injury of the U.S. stock of California sea lions (2,446) based on observer data collected from 1991 to 1993 exceeds 10 percent of the calculated PBR level for this stock (505). However, preliminary estimates for the first three quarters of 1994 indicate that a large reduction in the mortality rate has taken place and that mortality may be less than 10 percent of the calculated PBR for 1994.

*Tier 2 evaluation:* Based on logbook data the incidental take of marine mammals is infrequent and California sea lion mortality and serious injuries are at a level less than 1 percent of the calculated PBR level.

## OR Salmon Ranch

*Tier 1 evaluation:* No incidental, but not intentional, mortalities or serious injuries of marine mammals have been reported for this fishery.

## AK Salmon Troll

*Tier 1 evaluation:* Total known Steller sea lion mortalities and serious injuries across all fisheries do not exceed 10 percent of the stock's PBR level with the current information. Low levels of observer coverage have been inadequate to determine mortality and serious injury levels for these stocks across all fisheries, and available data suggest that levels of mortality and serious injury may exceed 10 percent of some stocks' PBR levels if observer information were available.

*Tier 2 evaluation:* Known Steller sea lion mortalities and serious injuries for this fishery do not exceed 1 percent of the stock's PBR level and current information does not indicate that this level would exceed 1 percent with observer coverage for this fishery.

## CA/OR/WA Salmon Troll

*Tier 1 evaluation:* Based on logbook data (1990–92), the mortality and serious injury of California sea lions across all fisheries, including the CA/OR/WA salmon troll fishery, exceeds 10 percent of this stock's PBR level.

*Tier 2 evaluation:* A review of logbook data (1990–1992) indicated that the majority of fishers reported intentional

lethal takes for deterrence in both the deterrence columns and the gear columns, owing to ambiguities in the reporting instructions. However, based on an earlier study (Miller *et al.*, 1983) it is known that incidental mortalities in this fishery are the result of intentional deterrence efforts which are now illegal. Once the duplicate reports are removed, the annual average mortality and serious injury of California sea lions is below one percent.

#### AK State Waters Sablefish Longline/Set Line

*Tier 1 evaluation:* No marine mammal serious injuries or mortalities have been documented incidental to this fishery.

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

*Tier 1 evaluation:* Evidence of interactions between the Hawaii pelagic longline fishery and Hawaiian monk seals began to accumulate in 1990, including 5 hooked seals and 13 unusual seal wounds that some believe were the result of interactions with the longline gear (Barlow *et al.* 1995). In October 1991, a permanent protected species zone was established around the Northwest Hawaiian Islands, which precludes longline fishing. One Risso's dolphin was observed "hooked" and was released alive in 1993 (pers. comm., Gene Nitta, Southwest Region, NMFS). Preliminary analysis of observer data from the swordfish longline fishery indicates that two Risso's dolphins were incidentally taken during 85 observed longline trips between February 1994 and October 1995 (NMFS unpublished data). One animal had ingested a hook and another appeared to be hooked in the caudal peduncle region. Both animals were released alive and swam away. Also, one bottlenose dolphin had ingested a hook and was also released alive. In 1994, a pygmy killer whale was hooked and released from longline gear. Furthermore, in 1991, a humpback whale was observed entangled in longline gear in Hawaii. Although the estimated PBR level for the central North Pacific humpback whale is 2.8 animals, no estimates of annual average humpback whale mortality and serious injury in the Hawaii longline fishery are available at this time. Thus, it is not possible to compare annual mortality and serious injury of humpback whales with its estimated PBR level. Estimates of PBR levels and annual mortality and serious injury for the other marine mammal species that have been documented interacting with the Hawaiian longline fishery are currently

not available. For these reasons, this fishery is placed in Category III.

#### AK Southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska Sablefish Longline/Set Line (Federally Regulated Waters)

*Tier 1 evaluation:* Total known mortalities or serious injuries of killer whales across all fisheries exceed 10 percent of the PBR level for transient, resident and transient and resident stocks together.

*Tier 2 evaluation:* Known killer whale mortalities or serious injuries in this fishery exceed 1 percent of the PBR level for transient, resident and transient and resident stocks together.

The majority of the serious injuries and mortalities of killer whales incidental to commercial fisheries occurred in the BSAI groundfish trawl. Because this trawl fishery has a high level of observer coverage, good mortality estimates for killer whales are available from this fishery. However, because the population estimates for killer whales are known to be underestimated and the low level of serious injury and mortality that occurs incidental to the trawl and longline fisheries are not likely to have a significant effect on the population, and because neither fishery has significant interactions with other species of marine mammals both fisheries are placed in Category III.

#### AK Gulf of Alaska Groundfish Trawl

*Tier 1 evaluation:* Total known Steller sea lion, harbor seal, northern elephant seal and Dall's porpoise mortalities or serious injuries across all fisheries do not exceed 10 percent of each stock's PBR level with the current information. Low levels of observer coverage have been inadequate to determine mortality and serious injury levels for these stocks across all fisheries, and available data suggest that levels of mortality and serious injury would exceed 10 percent of some stocks' PBR levels if observer information were available.

*Tier 2 evaluation:* Marine mammal mortalities and serious injuries levels approaching 1 percent are not expected for any stock by this fishery.

#### AK BSAI Groundfish Trawl

*Tier 1 evaluation:* Total known mortalities or serious injuries of killer whales across all fisheries exceed 10 percent of the PBR level for transient, resident, and transient and resident stocks combined.

*Tier 2 evaluation:* Known killer whale mortalities or serious injuries in this fishery exceed 1 percent of the PBR

level for transient, resident and transient and resident stocks combined.

Killer whales are seriously injured and killed incidental to two fisheries: The AK southern BSAI, and Western Gulf of Alaska sablefish longline/set line (federally regulated waters) fishery and the AK BSAI groundfish trawl fishery. However, the majority of the serious injuries and mortalities of killer whales incidental to commercial fisheries occurred in the BSAI groundfish trawl. Because this trawl fishery has a high level of observer coverage, good mortality estimates for killer whales are available from this fishery. However, because the population estimates for killer whales are known to be underestimated, and the low level of serious injury and mortality that occurs incidental to the trawl and longline fisheries are not likely to have a significant effect on the population, both fisheries are placed in Category III.

#### AK Bering Sea, Gulf of Alaska (GOA) Finfish Pot

*Tier 1 evaluation:* Total known harbor seal mortalities or serious injuries across all fisheries do not exceed 10 percent of each stock's PBR level with the current information. Low levels of observer coverage have been inadequate to determine mortality and serious injury levels for these stocks across all fisheries, and available data suggest that levels of mortality and serious injury may exceed 10 percent of some stocks' PBR levels if observer information were available.

*Tier 2 evaluation:* Marine mammal mortalities and serious injuries levels approaching 1 percent are not expected for any stock by this fishery.

#### CA Lobster, Prawn, Shrimp, Rock Crab, Fish Pot

*Tier 1 evaluation.* Although the California Marine Mammal Stranding Network, NMFS, receives reports of gray whales entangled in lobster pot gear, these entanglements, while technically "injuries", do not appear to result in mortalities. No other reports of marine mammal incidental takes have been reported from these fisheries. For these reasons, this fishery is placed in Category III.

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

##### Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Pair Trawl

*Tier 1 evaluation:* Annual incidental mortality and serious injury across all fisheries for all stocks known to interact

with this fishery is greater than 10 percent of the PBR level.

*Tier 2 evaluation:* Extrapolation of observer data results in an estimated total incidental serious injury and mortality of 79 offshore bottlenose dolphins and 33 common dolphins per year from 1992–93. These take levels represent an annual incidental mortality and serious injury that is greater than 50 percent of the PBR levels for both species.

Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Drift Gillnet Fishery

*Tier 1 evaluation:* Incidental annual mortality and serious injury across all fisheries for all stocks (with known PBR levels) interacting with this fishery is greater than 10 percent of the PBR level.

*Tier 2 evaluation:* Extrapolation of observer data results in an annual estimated total serious injuries and mortalities of 59 Risso's dolphins, 424 common dolphins, 61 pilot whales, and 53 offshore bottlenose dolphins per year from 1989–1993. These serious injury and mortality levels represent an annual incidental mortality and serious injury that is greater than 50 percent of the PBR levels for these species.

The serious injury of a right whale in 1993 was reported by the observer program. It was not an observed mortality; therefore it was not reported as an "observed kill." NMFS believes, however, that this whale probably died from injuries sustained in this incident. One serious injury or mortality of a right whale is greater than 50 percent of the PBR level for this species. Therefore, this fishery would also fall into Category I based on interactions with right whales. New England multispecies sink gillnet (including species as defined in the Multispecies Fisheries Management Plan and spiny dogfish and monkfish)

*Tier 1 evaluation:* Incidental annual mortality and serious injury across all fisheries for all stocks interacting with this fishery—with the exception of grey seals—is greater than 10 percent of the PBR level.

*Tier 2 evaluation:* Extrapolation of observer data results in an estimated total serious injury and mortality of 102 Atlantic white-sided dolphins and 1,875 harbor porpoise per year from 1990–93. These serious injury and mortality levels represent an annual incidental mortality and serious injury that is greater than 50 percent of the PBR levels for these species.

Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Longline Fishery

This fishery was listed as Category II in the previous LOF and is moved to

Category I in this LOF and re-named "Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Longline."

*Tier 1 evaluation:* Incidental annual mortality and serious injury across all fisheries for pilot whale stock(s) interacting with this fishery is greater than 10 percent of the PBR level.

*Tier 2 evaluation:* Extrapolation of observer data results in an estimated total incidental mortality and serious injury of 26 pilot whales per year from 1992–93. This represents an annual incidental mortality and serious injury that is greater than 50 percent of the PBR level for either long-finned or short-finned pilot whales. Therefore, this fishery is moved from Category II to Category I.

This reclassification is supported by MMEP logbook data, which includes reports of injury or mortality of an average of nine pilot whales (stock unspecified) per year for the years 1990 to 1992. NMFS has also received sighting reports (both at sea and stranded) of whales carrying gear that may be attributable to the pelagic longline fishery.

#### Category II

U.S. Mid-Atlantic Coastal Gillnet Fishery

*Tier 1 evaluation:* Incidental mortality and serious injury across all fisheries for harbor porpoise, coastal bottlenose dolphins, and humpback whales, which are known to interact with this fishery, is greater than 10 percent of the PBR levels for these stocks. Therefore this fishery is subject to Tier 2 analysis.

*Tier 2 evaluation:* Little observer coverage occurred in this fishery between 1989 and 1993. No serious injuries and mortalities were observed during those years. Therefore, no annual incidental mortality and serious injury from this fishery can be reported from observer data for these years. Based on observer coverage in 1994, entanglements of humpback whales and dolphins observed by NMFS and the public (not the observer program) and evidence of gillnet entanglement observed in stranded harbor porpoise, bottlenose dolphins, and humpback whales, NMFS believes that annual serious injury and mortality for these species due to this fishery is greater than 1 percent but less than 50 percent of the PBR levels for these stocks. Therefore this fishery is placed in Category II. For clarification of how the stranding data were used in this analysis, see the proposed LOF (60 FR 31680, June 16, 1995).

Gulf of Maine Small Pelagics Surface Gillnet

Occasional anecdotal reports of mortalities and injuries of marine mammals incidental to this fishery have been reported. Because there have been reports of mortalities in this fishery, it is placed in Category II.

Southeast U.S. Atlantic Shark Gillnet Fishery

*Tier 1 evaluation:* Incidental annual mortality and serious injury across all fisheries for the western North Atlantic coastal bottlenose dolphin stock interacting with this fishery are greater than 10 percent of the PBR level.

*Tier 2 evaluation:* Observer data for this fishery indicate that mortality to the western North Atlantic coastal bottlenose dolphin stock due to this fishery is 4 percent; thus, the fishery belongs in Category II.

In addition, a young right whale calf was observed off the northern coast of Florida, which had wounds indicative of interaction with gillnet gear in February 1994. The animal also exhibited propeller wounds believed by researchers investigating the incident to have been inflicted by the fishery vessel responsible for the net wounds. It was concluded that the shark gillnet fishery was the only large mesh gillnet fishery operating in that area at the time. The animal has not been sighted since, and is presumed to be dead. Another suspected interaction between this fishery and a right whale cow was also reported in this same year, although it is believed that this particular interaction was not fatal.

Atlantic Squid, Mackerel, Butterfish Trawl

This fishery was proposed to combine "Mid-Atlantic Squid Trawl" and "Mid-Atlantic Mackerel Trawl" from the 1994 LOF. The proposed LOF called this fishery the "Atlantic mid-water trawl." In the final LOF, the fishery is renamed "Atlantic Squid, Mackerel, Butterfish Trawl" with no reference to whether fishermen are using bottom or mid-water gear.

*Tier 1 evaluation:* Based on MMEP logbook reports from the squid and mackerel trawl fisheries, incidental annual mortality and serious injury across all fisheries for all stocks reported to interact with this fishery are greater than 10 percent of the PBR level.

*Tier 2 evaluation:* MMEP logbook data averaged over 1990–92 result in reported serious injuries and mortalities of five pilot whales per year. This represents a minimum serious injury and mortality level of greater than 1

percent but less than 50 percent of the PBR level for either long-finned or short-finned pilot whales. Therefore, this fishery is placed in Category II.

#### North Carolina Haul Seine

Representatives of the North Carolina marine mammal stranding network have noted interactions between this gear and western North Atlantic coastal bottlenose dolphins. Three dolphins were observed as they were released live from this gear; on another occasion, one dolphin was recovered dead from an interaction with a haul seine. These observations support the decision to place this new fishery in Category II until NMFS has more data with which to support this or another classification.

#### North Carolina Roe Mullet Stop Net

*Tier 1 evaluation:* Incidental annual mortality and serious injury across all fisheries for the coastal bottlenose dolphin stock interacting with this fishery is greater than 10 percent of PBR.

*Tier 2 evaluation:* Evidence of mortality due to stop net entanglement observed in stranded western North Atlantic coastal bottlenose dolphins indicate that annual serious injury and mortality related to this fishery for this stock is greater than 1 percent but less than 50 percent of PBR. Therefore, this fishery is placed in Category II.

#### Category III

Rhode Island, Southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) Inshore Gillnet

At this time there is no information available to suggest that serious injury and mortality of marine mammals occur incidental to this fishery. Based on patterns of marine mammal distribution, likelihood of encounters with cetaceans is low, but encounters with seals may occur. This fishery was separated from other Mid-Atlantic gillnet fisheries to account for differences in cetacean distribution. A closer examination of more recent stranding and entanglement records may provide information to support re-classification of this fishery in the future.

#### Long Island Sound Inshore Gillnet

At this time there is no available information to suggest that serious injury and mortality of marine mammals occur incidental to this fishery. Based on patterns of marine mammal distribution, likelihood of encounters with cetaceans is low, but encounters with seals may occur. This fishery was separated from other Mid-Atlantic gillnet fisheries to account for

differences in cetacean distribution. A closer examination of more recent stranding and entanglement records may provide information to support re-classification of this fishery in the future.

#### Delaware Bay Inshore Gillnet

At this time, there is no available information to suggest that serious injury and mortality of marine mammals occur incidental to this fishery. Based on patterns of marine mammal distribution, likelihood of encounters is low. This fishery was separated from other Mid-Atlantic gillnet fisheries to account for differences in marine mammal distribution. A closer examination of more recent stranding and entanglement records may provide information to support re-classification of this fishery in the future.

#### Chesapeake Bay Inshore Gillnet

This fishery was listed as a Category III in the previous LOF and remains in Category III in this LOF. This listing was inadvertently omitted from the proposed LOF.

At this time, there is no available information to suggest that serious injury and mortality of marine mammals occur incidental to this fishery. Based on patterns of marine mammal distribution, likelihood of encounters is low. This fishery was separated from other Mid-Atlantic gillnet fisheries to account for differences in marine mammal distribution. A closer examination of more recent stranding and entanglement records may provide information to support re-classification of this fishery in the future.

#### North Carolina Inshore Gillnet

No marine mammal serious injuries or mortalities have been documented incidental to this fishery. All marine mammal strandings exhibiting evidence of gillnet fishery interactions recovered by the North Carolina marine mammal stranding network since at least 1992 have been from offshore locations. However, as marine mammals stranded in the marshes are difficult to detect, stranding data will reflect this bias. NMFS agrees that there is potential for interaction and will continue to collect stranding and other information on this fishery.

Gulf of Mexico Inshore Gillnet (black drum, sheepshead, weakfish, mullet, spot, croaker)

Inshore gillnet fisheries in the Gulf of Mexico have been classified by analogy with similar inshore fisheries in the mid-Atlantic. The PBR levels for stocks of bottlenose dolphins in the Gulf of

Mexico bays, sounds, and estuaries are low, because dolphin numbers and densities in many of these areas are low. These low densities also decrease the likelihood of a fishery interacting with dolphins in these areas. Net bans and restrictions in states such as Texas, Florida, and Louisiana, further decrease chances of gillnet fisheries interactions with marine mammals in inshore waters of Gulf states. However, researchers have noted that dolphin densities in some Gulf bays/sounds may be higher than that commonly observed in similar Atlantic bays. Also, detection of stranded animals is much less likely along marshy coastlines than on coastal beaches; thus, stranding data will reflect this bias. NMFS agrees that there is potential for interaction between marine mammals and this fishery.

#### Offshore Monkfish Bottom Gillnet

This is a new fishery to the LOF and may have been listed incorrectly as Category III in the proposed LOF. Because this fishery may have a high potential to take many cetacean species based on analogy with other shelf-edge fisheries, such as the large pelagic drift net fishery, NMFS will examine available data during the development of the next proposed LOF for possible re-classification of this fishery as Category II.

#### Southeastern U.S. Atlantic, Gulf of Mexico Coastal Gillnet

Although coastal gillnet fisheries have been banned in Florida State waters, and only shark and shad/sturgeon may be fished using gillnet in South Carolina and Georgia State waters, the "Southeastern U.S. Atlantic" component of this fishery will be retained in this final LOF. If there are no participants in this component of the coastal gillnet fishery when the next proposed LOF is developed, NMFS will consider proposing to remove this fishery from the LOF. Any strandings that can be determined to have occurred incidental to gillnet operations in Florida, Georgia, or South Carolina, would have to be attributed to the other gillnet operations that occur in these areas (i.e., shark gillnet or shad/sturgeon gillnet fisheries).

Stranding data from the Gulf of Mexico indicate that gillnet interactions with coastal stocks of bottlenose dolphins may warrant classification of this fishery in Category II. This may be examined during preparation of a future proposed LOF.

#### Florida Mullet Gillnet

This fishery has been removed from LOF due to the Florida net ban. Some

fishers that previously fished in Florida waters may be working in Louisiana waters; what remains of this fishery is combined with the other Gulf of Mexico gillnet fisheries.

#### North Atlantic Bottom Trawl

*Tier 1 evaluation:* Incidental annual mortality and serious injury across all fisheries for all marine mammal stocks interacting with this fishery is greater than 10 percent of the PBR levels.

*Tier 2 evaluation:* Annual incidental mortality and serious injury from this fishery reported by the observer program (averaged over 1989–93) is greater than 50 percent of the PBR level for striped dolphins, coastal bottlenose dolphins, and pilot whales. Therefore, this fishery would have been placed in Category I. However, because the observer coverage in this fishery is low, the estimated serious injury and mortality levels are statistically weak. Thus, NMFS believes this fishery should remain in Category III at this time. The proposed LOF included further justification for this decision (60 FR 31680–31681, June 16, 1995). NMFS anticipates having additional information from other observer programs that may result in a reclassification of this fishery in a future proposed LOF.

#### Mid-Atlantic, U.S. South Atlantic, Gulf of Mexico Shrimp Trawl

*Tier 1 evaluation:* Incidental annual mortality and serious injury across all fisheries for all marine mammal stocks interacting with this fishery is less than 10 percent of the PBR level.

Over 10,000 hours of observer effort in this fishery have been logged in the Atlantic, and over 17,000 have been logged in the Gulf. No takes of any marine mammal species have been observed. However, a Category III report submitted from a shrimp trawl fisher off Key West indicated a dolphin mortality occurred due to entanglement with the lazy line. This incident took place offshore, on the Gulf side of Key West, and thus likely involved the eastern coastal Gulf of Mexico stock of bottlenose dolphins.

#### Gulf of Maine Menhaden Purse Seine

This fishery was grouped with the Mid-Atlantic menhaden purse seine fishery in the proposed LOF. In this final LOF, the fishery is divided into "Gulf of Maine menhaden purse seine" and "Mid-Atlantic menhaden purse seine" because serious injuries and mortalities of bottlenose dolphins in the Gulf of Maine portion of this fishery are unlikely.

The Gulf of Maine menhaden purse seine fishery is placed in Category III based on a low probability of marine mammal encounters resulting in serious injury or mortality. This fishery may interact with harbor seals, minke whales, and humpback whales. However, NMFS believes that these interactions would not represent a serious injury or mortality level above 1 percent of PBR levels for these species and that the Gulf of Maine menhaden purse seine fishery is appropriately placed in Category III.

#### Mid-Atlantic Menhaden Purse Seine

This fishery was grouped with the Gulf of Maine menhaden purse seine fishery in the proposed LOF. In this final LOF, the fishery is divided into "Gulf of Maine menhaden purse seine," and "Mid-Atlantic menhaden purse seine" because serious injuries and mortalities of bottlenose dolphins in the Gulf of Maine portion of this fishery are unlikely.

This fishery was erroneously proposed to be placed in Category II in the proposed LOF, because incidental takes of bottlenose dolphins that occurred in the Gulf of Mexico menhaden purse seine were attributed to the Mid-Atlantic menhaden purse seine. This error has been corrected, and the Mid-Atlantic menhaden purse seine is placed in Category III in this final LOF.

#### Gulf of Mexico Menhaden Purse Seine

Information on bycatch studies in this fishery, recently made available to the NMFS Southeast Region, indicate that mortalities of bottlenose dolphin of the northern Gulf of Mexico coastal stock have been observed in this fishery (two observed mortalities in 1992, two caught live and released in 1994, and one mortality to date in 1995). Additionally, category III reports indicate that three dolphins were taken in 1993. Complete effort data for the bycatch study is not yet available; however, the available information indicates that reclassification of this fishery may be proposed in a future LOF. NMFS will continue to investigate available information as well as monitor future results of the bycatch study to determine whether reclassification is justified for this fishery.

#### Gulf of Maine, U.S. Mid-Atlantic Mixed Species Trap/Pot

#### U.S. Mid-Atlantic Black Sea Bass Trap/Pot

#### Gulf of Maine, U.S. Mid-Atlantic Inshore Lobster Pot

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

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

#### U.S. South Atlantic, Gulf of Mexico, Caribbean Spiny Lobster Trap/Pot

Entanglements of cetacean stocks in pot and/or trap fisheries have been well documented. The degree to which marine mammals become entangled in pot and/or trap fisheries and whether a reclassification of some or all pot and/or trap fisheries is warranted, may be investigated in a future proposed LOF. Gulf of Maine Herring and Atlantic Mackerel Stop Seine/Weir

No new information has been received which would change or confirm the placement of this fishery in Category III. NMFS believes that if interactions of this fishery with harbor porpoise occur, there would not be a serious injury or mortality level that would represent greater than 1 percent of the PBR level for harbor porpoise.

#### U.S. Mid-Atlantic Mixed Species Stop Seine/Weir (Except the North Carolina Roe Mullet Stop Net)

This fishery includes the pound net fishery. The EA states that there is one report of a bottlenose dolphin mortality in the observed Chesapeake Bay pound net fishery. However, data indicates that more than one stranded dolphin has been found wrapped in pound net gear. In addition, a Kogia was recovered from pound net gear in North Carolina, in 1993. Classification of this fishery will be re-evaluated in a future proposed LOF.

#### List of Fisheries

The following two tables list the commercial fisheries of the United States according to their MMPA section 118 categories. The estimated number of vessels is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the 1994 LOF is used.

The information on which marine mammal species/stocks are involved in interactions with the fishery is based on observer data, logbook data, stranding reports, and fishers' reports. Only those species or stocks known to incur injury or mortality incidental to specific fisheries are listed. An asterisk (\*) indicates that the stock is a strategic stock; a plus (+) indicates that the stock is listed as threatened or endangered under the ESA.

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

| Fishery description   | Estimated No. of ves-sels/per-sons | Marine mammal species/stocks incidentally injured/killed  |
|---|------------------------------------|---|
| <b>Category I:</b>  |                                    |   |
| <i>Gillnet fisheries:</i>   |                                    |   |
| CA angel shark/halibut and other species large mesh (>3.5in) set gillnet fishery.   | 80                                 | Harbor porpoise, central CA; Common dolphin, short-beaked, CA/OR/WA; Common dolphin, long-beaked, CA; California sea lion, U.S.; Harbor seal, CA; Northern elephant seal, CA breeding.  |
| CA/OR thresher shark/swordfish drift gillnet fishery.   | 150                                | Steller sea lion, Eastern U.S.*+; Sperm whale, CA to WA*+; Dall's porpoise, CA/OR/WA; Pacific white sided dolphin, CA/OR/WA; Risso's dolphin, CA/OR/WA; Bottlenose dolphin, CA/OR/WA offshore Common dolphin, short-beaked, CA/OR/WA; Common dolphin, long-beaked, CA; Northern right whale dolphin, CA/OR/WA; Short-finned pilot whale, CA/OR/WA*; Baird's beaked whale, CA/OR/WA; Mesoplodont beaked whales, CA to WA*; Cuvier's beaked whale, CA/OR/WA; Pygmy sperm whale, CA/OR/WA*; California sea lion, U.S.; Harbor seal, CA; Northern elephant seal, CA breeding; Harbor porpoise, OR/WA coastal; Hump-back whale, CA/OR/WA-Mexico. |
| <b>Category II:</b>   |                                    |   |
| <i>Gillnet fisheries:</i>   |                                    |   |
| AK Prince William Sound salmon drift gillnet.   | 509                                | Steller sea lion, Western U.S.*+; Northern fur seal, North Pacific*; Harbor seal, GOA; Pacific white-sided dolphin, central North Pacific; Harbor porpoise, AK; Dall's porpoise, AK.  |
| AK Peninsula/Aleutians salmon drift gillnet fishery.  | 107                                | Northern fur seal, North Pacific; Harbor seal, GOA; Harbor seal, Bering Sea; Harbor porpoise, AK; Dall's porpoise, AK; Northern (Alaska) sea otter, Pacific.  |
| AK Peninsula/Aleutian Island salmon set gillnet.  | 120                                | Steller sea lion, Western U.S.*+; Harbor porpoise, AK.  |
| Southeast Alaska salmon drift gillnet fishery.  | 443                                | Steller sea lion, Eastern U.S.*+; Harbor seal, Southeast AK; Pacific white-sided dol-phin, central North Pacific; Harbor porpoise, AK; Dall's porpoise, AK; Humpback whale, central North Pacific*+.  |
| AK Cook Inlet drift gillnet .....   | 554                                | Steller sea lion, Western U.S.*+; Harbor seal, GOA; Harbor porpoise, AK; Dall's por-poise, AK.  |
| AK Cook Inlet salmon set gillnet ..   | 633                                | Steller sea lion, Western U.S.*+; Harbor seal, GOA; Harbor porpoise, AK; Beluga, Cook Inlet.  |
| AK Yakutat salmon set gillnet .....   | 152                                | Harbor seal, Southeast AK.  |
| AK Kodiak salmon set gillnet .....  | 162                                | Harbor seal, GOA; Harbor porpoise, AK.  |
| AK Bristol Bay drift gillnet .....  | 1,741                              | Steller sea lion, Western U.S.*+; Northern fur seal, North Pacific*; Harbor seal, Ber-ing Sea; Beluga, Bristol Bay; Gray whale, Eastern North Pacific.  |
| AK Bristol Bay set gillnet .....  | 888                                | Harbor seal, Bering Sea; Beluga, Bristol Bay; Gray whale, Eastern North Pacific.  |
| AK Metlakatla/Annette Island salmon drift gillnet.  | 60                                 | None documented.  |
| WA Puget Sound Region salmon drift gillnet fishery (includes all inland waters south of US-Can-ada border and eastward of the Bonilla-Tatoosh line—Treaty In-dian fishing is excluded). | 1,044                              | Harbor porpoise, inland WA; Dall's porpoise, CA/OR/WA; Harbor seal, WA inland.  |
| <i>Purse seine fisheries:</i>   |                                    |   |
| CA anchovy, mackerel, tuna purse seine.   | 150                                | Bottlenose dolphin, CA/OR/WA offshore; California sea lion, U.S.; Harbor seal, CA.  |
| AK Southeast salmon purse seine   | 443                                | Humpback whale, central North Pacific*+.  |
| <i>Trawl fisheries:</i>   |                                    |   |
| AK pair trawl .....   | 2                                  | None documented.  |
| <i>Longline fisheries:</i>  |                                    |   |
| OR swordfish/blue shark surface longline fishery.   | 30                                 | None documented.  |
| <b>Category III:</b>  |                                    |   |
| <i>Gillnet fisheries:</i>   |                                    |   |
| AK Prince William Sound set gillnet.  | 29                                 | Steller sea lion, Western U.S.*+; Harbor seal, GOA.   |
| AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.   | 1,651                              | None documented.  |
| AK roe herring and food/bait her-ring gillnet.  | 162                                | None documented.  |
| WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.  | 913                                | None documented.  |
| WA Willapa Bay drift gillnet .....  | 82                                 | Harbor seal, OR/WA coast; Northern elephant seal, CA breeding.  |
| WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).   | 24                                 | Harbor seal, OR/WA coast.   |
| WA, OR lower Columbia River (in-cludes tributaries) drift gillnet.  | 40                                 | California sea lion, U.S.; Harbor seal, OR/WA coast.  |

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

| Fishery description  | Estimated No. of ves-sels/per-sons | Marine mammal species/stocks incidentally injured/killed  |
|--|------------------------------------|---|
| CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.   | 341                                | None documented.  |
| AK miscellaneous finfish set gillnet.  | 9                                  | Steller sea lion, Western U.S.*+.   |
| Hawaii gillnet .....   | 115                                | Bottlenose dolphin, Hawaiian; Spinner dolphin, Hawaiian.  |
| <i>Purse seine, beach seine, round haul and throw net fisheries:</i>   |                                    |   |
| AK salmon purse seine (except Southeast Alaska, which is in Category II).  | 1,053                              | Harbor seal, GOA.   |
| AK salmon beach seine .....  | 34                                 | None documented.  |
| AK roe herring and food/bait herring purse seine.  | 866                                | None documented.  |
| AK roe herring and food/bait herring beach seine.  | 14                                 | None documented.  |
| AK Metlakatla purse seine .....  | 3                                  | None documented.  |
| AK octopus/squid purse seine .....   | 3                                  | None documented.  |
| CA herring purse seine .....   | 100                                | Bottlenose dolphin, CA coastal; California sea lion, U.S.; Harbor seal, CA.   |
| CA sardine purse seine .....   | 120                                | None documented.  |
| CA squid purse seine .....   | 145                                | California sea lion, U.S.   |
| AK miscellaneous finfish purse seine.  | 6                                  | None documented.  |
| AK miscellaneous finfish beach seine.  | 4                                  | None documented.  |
| WA salmon purse seine .....  | 440                                | None documented.  |
| WA salmon reef net .....   | 53                                 | None documented.  |
| WA, OR herring, smelt, squid purse seine or lampara.   | 130                                | None documented.  |
| WA (all species) beach seine or drag seine.  | 235                                | None documented.  |
| HI purse seine .....   | 18                                 | None documented.  |
| HI opelu/akule net .....   | 16                                 | None documented.  |
| HI throw net, cast net .....   | 47                                 | None documented.  |
| <i>Dip net fisheries:</i>  |                                    |   |
| WA, OR smelt, herring dip net .....  | 119                                | None documented.  |
| CA squid dip net .....   | 115                                | None documented.  |
| <i>Marine aquaculture fisheries:</i>   |                                    |   |
| WA, OR salmon net pens .....   | 21                                 | California sea lion, U.S.   |
| CA salmon enhancement rearing pen.   | >1                                 | None documented.  |
| OR salmon ranch .....  | 1                                  | None documented.  |
| <i>Troll fisheries:</i>  |                                    |   |
| AK salmon troll .....  | 1,450                              | Steller sea lion, Eastern U.S.*+.   |
| CA/OR/WA salmon troll .....  | 4,300                              | None documented.  |
| AK north Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries. | 1,354                              | None documented.  |
| HI trolling, rod and reel .....  | 1,795                              | None documented.  |
| Guam tuna troll .....  | 50                                 | None documented.  |
| Commonwealth of the Northern Mariana Islands tuna troll.   | 50                                 | None documented.  |
| American Samoa tuna troll .....  | <50                                | None documented.  |
| HI net unclassified .....  | 106                                | None documented.  |
| <i>Longline/set line fisheries:</i>  |                                    |   |
| AK state waters sablefish long line/set line.  | 240                                | None documented.  |
| Miscellaneous finfish/groundfish longline/set line.  | 838                                | Harbor seal, GOA; Harbor seal, Bering Sea; Northern elephant seal, CA breeding.   |
| HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.  | 140                                | Hawaiian monk seal, HI*+; Humpback whale, Central North Pacific*+; Risso's dolphin, Hawaiian; Bottlenose dolphin, Hawaiian. |
| WA, OR North Pacific halibut longline/set line.  | 350                                | None documented.  |
| AK southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska sablefish longline/set line (federally regulated waters).   | 226                                | Northern elephant seal, CA breeding; Killer whale, resident; Killer whale, transient.                                       |

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

| Fishery description   | Estimated No. of vessels/persons | Marine mammal species/stocks incidentally injured/killed   |
|---|----------------------------------|--|
| AK halibut longline/set line (state and Federal waters).  | 213                              | Steller sea lion, Western U.S.*+.  |
| WA, OR, CA groundfish, bottomfish longline/set line.  | 367                              | None documented.   |
| AK octopus/squid longline .....   | 1                                | None documented.   |
| CA shark/bonito longline/set line ..  | 10                               | None documented.   |
| <i>Trawl fisheries:</i>   |                                  |  |
| WA, OR, CA shrimp trawl .....   | 300                              | None documented.   |
| AK shrimp otter trawl and beam trawl (statewide and Cook Inlet).  | 48                               | None documented.   |
| AK Gulf of Alaska groundfish trawl  | 490                              | Steller sea lion, Western U.S.*+; Northern fur seal, North Pacific*; Harbor seal, GOA; Dall's porpoise, AK; Northern elephant seal, CA breeding.   |
| AK Bering Sea and Aleutian Islands groundfish trawl.  | 490                              | Steller sea lion, Western U.S.*+; Northern fur seal, North Pacific*; Killer whale, resident; Killer whale, transient; Pacific white-sided dolphin, central North Pacific; Harbor porpoise, AK; Harbor seal, Bering Sea; Harbor seal, GOA; Bearded seal, AK; Ringed seal, AK; Dall's porpoise, AK; Spotted seal, AK; Ribbon seal, AK; Northern elephant seal, CA breeding; Northern (Alaska) sea otter, Pacific; Walrus, Pacific. |
| AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl. | 8                                | None documented.   |
| AK miscellaneous finfish otter or beam trawl.   | 324                              | None documented.   |
| AK food/bait herring trawl .....  | 2                                | None documented.   |
| WA, OR, CA groundfish trawl .....   | 585                              | Steller sea lion, Western U.S.*+; Northern fur seal, North Pacific*; Pacific white-sided dolphin, central North Pacific; Dall's porpoise, CA/OR/WA; California sea lion, U.S.; Harbor seal, OR/WA coast.   |
| <i>Pot, ring net, and trap fisheries:</i>   |                                  |  |
| AK crustacean pot .....   | 1,951                            | None documented.   |
| AK Bering Sea, GOA finfish pot ...  | 226                              | Harbor seal, GOA; Northern (AK) sea otter, Pacific.  |
| WA, OR, CA sablefish pot .....  | 176                              | None documented.   |
| WA, OR, CA crab pot .....   | 1,478                            | None documented.   |
| WA, OR shrimp pot and trap .....  | 254                              | None documented.   |
| CA lobster, prawn, shrimp, rock crab, fish pot.   | 608                              | None documented.   |
| OR, CA hagfish pot or trap .....  | 25                               | None documented.   |
| HI lobster trap .....   | 15                               | Hawaiian monk seal, HI*+.  |
| HI crab trap .....  | 22                               | None documented.   |
| HI fish trap .....  | 19                               | None documented.   |
| HI shrimp trap .....  | 5                                | None documented.   |
| <i>Handline and jig fisheries:</i>  |                                  |  |
| AK North Pacific halibut handline and mechanical jig.   | 84                               | None documented.   |
| AK other finfish handline and mechanical jig.   | 474                              | None documented.   |
| AK octopus/squid handline .....   | 2                                | None documented.   |
| WA groundfish, bottomfish jig .....   | 679                              | None documented.   |
| HI aku boat, pole and line .....  | 54                               | None documented.   |
| HI inshore handline .....   | 650                              | Bottlenose dolphin, HI.  |
| HI deep sea bottomfish .....  | 434                              | Hawaiian monk seal, HI*+.  |
| HI tuna .....   | 144                              | Rough-toothed dolphin, HI; Bottlenose dolphin, HI; Hawaiian monk seal, HI*+.   |
| Guam bottomfish .....   | <50                              | None documented.   |
| Commonwealth of the Northern Mariana Islands bottomfish.  | <50                              | None documented.   |
| American Samoa bottomfish .....   | <50                              | None documented.   |
| <i>Harpoon fisheries:</i>   |                                  |  |
| CA swordfish harpoon .....  | 228                              | None documented.   |
| <i>Pound net/weir fisheries:</i>  |                                  |  |
| AK Southeast Alaska herring food/bait pound net.  | 7                                | None documented.   |
| WA herring brush weir .....   | 1                                | None documented.   |
| <i>Bait pens:</i>   |                                  |  |
| WA/OR/CA bait pens .....  | 13                               | None documented.   |
| <i>Dredge fisheries:</i>  |                                  |  |
| Coastwide scallop dredge .....  | 106                              | None documented.   |
| <i>Dive, hand/mechanical collection fisheries:</i>  |                                  |  |
| AK abalone .....  | 177                              | None documented.   |
| AK dungeness crab .....   | 1                                | None documented.   |



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

| Fishery description  | Estimated No. of ves-sels/per-sons | Marine mammal species/stocks incidentally injured/killed |
|--|------------------------------------|--|
| AK herring spawn-on-kelp .....   | 306                                | None documented.   |
| AK urchin and other fish/shellfish .   | 127                                | None documented.   |
| AK clam hand shovel .....  | 125                                | None documented.   |
| AK clam mechanical/hydraulic fishery.  | 3                                  | None documented.   |
| WA herring spawn-on-kelp .....   | 4                                  | None documented.   |
| WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection. | 637                                | None documented.   |
| CA abalone .....   | 111                                | None documented.   |
| CA sea urchin .....  | 583                                | None documented.   |
| HI squidding, spear .....  | 267                                | None documented.   |
| HI lobster diving .....  | 6                                  | None documented.   |
| HI coral diving .....  | 2                                  | None documented.   |
| HI handpick .....  | 135                                | None documented.   |
| WA shellfish aquaculture .....   | 684                                | None documented.   |
| WA, CA kelp .....  | 4                                  | None documented.   |
| HI fish pond .....   | 10                                 | None documented.   |
| <i>Commercial passenger fishing vessel (charter boat) fisheries:</i>   |                                    |  |
| AK, WA, OR, CA commercial pas-senger fishing vessel.   | 1,243                              | None documented.   |
| AK octopus/squid "other" .....   | 19                                 | None documented.   |
| HI "other" .....   | 114                                | None documented.   |
| <i>Live finfish/shellfish fisheries:</i>   |                                    |  |
| CA finfish and shellfish live trap/hook-and-line.  | 93                                 | None documented.   |

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

| Description of fishery   | Estimated No. of ves-sels/per-sons | Marine mammal species/stocks incidentally injured/killed  |
|--|------------------------------------|---|
| Category I:  |                                    |   |
| <i>Pair trawl fisheries:</i>   |                                    |   |
| U.S. Atlantic large pelagics pair trawl.   | 7                                  | Risso's dolphin, WNA; Long-finned pilot whale, WNA*; Common dolphin, WNA*; Bottlenose dolphin, WNA offshore*.   |
| <i>Gillnet fisheries:</i>  |                                    |   |
| Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics drift gillnet.  | 75                                 | North Atlantic right whale, WNA*+; Humpback whale, WNA*+; Sperm whale, WNA*+; Dwarf sperm whale, WNA*; Pygmy sperm whale, WNA*; Cuvier's beaked whale, WNA*; True's beaked whale, WNA*; Gervais' beaked whale, WNA*; Blainville's beaked whale, WNA*; Risso's dolphin, WNA; Long-finned pilot whale, WNA*; Short-finned pilot whale, WNA*; White-sided dolphin, WNA*; Common dolphin, WNA*; Atlantic spotted dolphin, WNA*; Pantropical spotted dolphin, WNA*; Striped dolphin, WNA; Spinner dolphin, WNA; Bottlenose dolphin, WNA offshore*; Harbor porpoise, GME/BF*. |
| New England multispecies sink gillnet (including species as defined in the Multispecies Fisheries Management Plan and spiny dogfish and monkfish). | 341                                | North Atlantic right whale, WNA*+; Humpback whale, WNA*+; Minke whale, Canadian east coast; Killer whale, WNA; White-sided dolphin, WNA*; Striped dolphin, WNA; Bottlenose dolphin, WNA offshore; Harbor porpoise, GME/BF*; Harbor seal, WNA; Gray seal, Northwest North Atlantic; Common dolphin; Fin whale; Spotted dolphin; False killer whale; Harp seal.   |
| <i>Longline fisheries:</i>   |                                    |   |
| Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.   | 361                                | Humpback whale, WNA*+; Minke whale, Canadian east coast; Risso's dolphin, WNA; Long-finned pilot whale, WNA*; Short-finned pilot whale, WNA*; Common dolphin, WNA*; Atlantic spotted dolphin, WNA*; Pantropical spotted dolphin, WNA; Striped dolphin, WNA; Bottlenose dolphin, WNA offshore*; Bottlenose dolphin, GMX Outer Continental Shelf; Bottlenose dolphin, GMX Continental Shelf Edge and Slope; Atlantic spotted dolphin, Northern GMX; Pantropical spotted dolphin, Northern GMX; Risso's dolphin, Northern GMX; Harbor porpoise, GME/BF*.                   |
| Category II:   |                                    |   |
| <i>Gillnet fisheries:</i>  |                                    |   |
| U.S. mid-Atlantic coastal gillnet fishery.   | >655                               | Humpback whale, WNA*+; Minke whale, Canadian east coast; Bottlenose dolphin, WNA offshore*; Bottlenose dolphin, WNA coastal*+; Harbor porpoise, GME/BF*.  |
| Gulf of Maine small pelagics surface gillnet.  | 133                                | Humpback whale, WNA*+; White-sided dolphin, WNA; Harbor seal, WNA.  |

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

| Description of fishery  | Estimated No. of vessels/persons | Marine mammal species/stocks incidentally injured/killed  |
|---|----------------------------------|---|
| Southeastern U.S. Atlantic shark gillnet fishery.   | 10                               | Bottlenose dolphin, WNA coastal*; North Atlantic right whale, WNA*+.  |
| <i>Trawl fisheries:</i>   |                                  |   |
| Atlantic squid, mackerel, butterfly trawl.  | 620                              | Common dolphin, WNA*; Risso's dolphin, WNA*; Long-finned pilot whale, WNA*; Short-finned pilot whale, WNA*; White-sided dolphin, WNA*.  |
| <i>Haul seine fisheries:</i>  |                                  |   |
| North Carolina haul seine .....   | unknown                          | Bottlenose dolphin, WNA coastal*; Harbor porpoise, GME/BF*.   |
| <i>Stop net fisheries:</i>  |                                  |   |
| North Carolina roe mullet stop net  | 13                               | Bottlenose dolphin, WNA coastal*.   |
| Category III:   |                                  |   |
| <i>Gillnet fisheries:</i>   |                                  |   |
| Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet. | 32                               | Humpback whale, WNA*+; Bottlenose dolphin, WNA coastal*+; Harbor porpoise, GME/BF*.   |
| Long Island Sound inshore gillnet   | 20                               | Humpback whale, WNA*+; Bottlenose dolphin, WNA coastal*+; Harbor porpoise, GME/BF*.   |
| Delaware Bay inshore gillnet .....  | 60                               | Humpback whale, WNA*+; Bottlenose dolphin, WNA coastal*+; Harbor porpoise, GME/BF*.   |
| Chesapeake Bay inshore gillnet ...  | 45                               | None documented.  |
| North Carolina inshore gillnet .....  | 94                               | None documented.  |
| Gulf of Mexico inshore gillnet (black drum, sheepshead, weakfish, mullet, spot, croaker) unknown                                | None documented.                 | None documented.  |
| Offshore monkfish bottom gillnet ..   | <50                              | None documented.  |
| Gulf of Maine, Southeast U.S. Atlantic coastal shad, sturgeon gillnet (includes waters of North Carolina).                      | 1,285                            | Minke whale, Canadian east coast; Harbor porpoise, GME/BF*; Bottlenose dolphin, WNA coastal*+.  |
| Gulf of Mexico coastal gillnet (includes mullet gillnet fishery in LA and MS).  | .....                            | Bottlenose dolphin, Western GMX coastal; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, GMX Bay, Sound, & Estuarine*. |
| Southeastern U.S. Atlantic coastal gillnet.   | 0.00                             | Bottlenose dolphin, WNA coastal*+.  |
| Florida east coast, Gulf of Mexico pelagics king and Spanish mackerel gillnet.  | 271                              | Bottlenose dolphin, Western GMX coastal; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, GMX Bay, Sound, & Estuarine*. |
| <i>Trawl fisheries:</i>   |                                  |   |
| North Atlantic bottom trawl .....   | 1,052                            | Long-finned pilot whale, WNA*; Short-finned pilot whale, WNA*; White-sided dolphin, WNA*; Striped dolphin, WNA; Bottlenose dolphin, WNA offshore*.                            |
| Mid-Atlantic, Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl.  | >18,000                          | Bottlenose dolphin, WNA coastal*+.  |
| Gulf of Maine northern shrimp trawl.  | 320                              | None documented.  |
| Gulf of Maine mackerel trawl .....  | 30                               | None documented.  |
| Gulf of Maine, Mid-Atlantic sea scallop trawl.  | 215                              | None documented.  |
| Gulf of Maine, Southern North Atlantic, Gulf of Mexico coastal herring trawl.   | 5                                | None documented.  |
| Mid-Atlantic mixed species trawl ..   | >1,000                           | None documented.  |
| Gulf of Mexico butterfly trawl .....  | 2                                | Atlantic spotted dolphin, Northern GMX; Pantropical spotted dolphin, Northern GMX.  |
| Georgia, South Carolina, Maryland whelk trawl.  | 25                               | None documented.  |
| Calico scallops trawl .....   | 200                              | None documented.  |
| Bluefish, croaker, flounder trawl ...   | 550                              | None documented.  |
| Crab trawl .....  | 400                              | None documented.  |
| U.S. Atlantic monkfish trawl .....  | unknown                          | None documented.  |
| <i>Marine aquaculture fisheries:</i>  |                                  |   |
| Finfish aquaculture .....   | 48                               | None documented.  |
| Shellfish aquaculture .....   | unknown                          | None documented.  |
| <i>Purse seine fisheries:</i>   |                                  |   |
| Gulf of Maine Atlantic herring purse seine.   | 30                               | Harbor porpoise, GME/BF*; Harbor seal, WNA; Gray seal, Northwest North Atlantic.  |

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

| Description of fishery   | Estimated No. of vessels/persons | Marine mammal species/stocks incidentally injured/killed   |
|--|----------------------------------|--|
| Mid-Atlantic menhaden purse seine.   | 22                               | Bottlenose dolphin, WNA coastal*+.   |
| Gulf of Maine menhaden purse seine.  | 10                               | None documented.   |
| Gulf of Mexico menhaden purse seine.   | 50                               | Bottlenose dolphin, Northern GMX coastal.  |
| Florida west coast sardine purse seine.  | 10                               | Bottlenose dolphin, Eastern GMX coastal.   |
| U.S. mid-Atlantic hand seine .....   | >250                             | None documented.   |
| <i>Longline/hook-and-line fisheries:</i>   |                                  |  |
| Gulf of Maine tub trawl groundfish bottom longline/ hook-and-line.   | 46                               | Harbor seal, WNA; Gray seal, Northwest North Atlantic.   |
| Southeastern U.S. Atlantic, Gulf of Mexico snapper-grouper and other reef fish bottom longline/ hook-and-line. | 3,800                            | None documented.   |
| Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/ hook-and-line.                               | 124                              | None documented.   |
| Gulf of Maine, U.S. mid-Atlantic tuna, shark swordfish hook-and-line/harpoon.                                  | 26,223                           | None documented.   |
| Southeastern U.S. Atlantic, Gulf of Mexico & U.S. mid-Atlantic pelagic hook-and-line/harpoon.                  | 1,446                            | None documented.   |
| <i>Trap/pot fisheries—lobster and crab:</i>  |                                  |  |
| Gulf of Maine, U.S. mid-Atlantic mixed species trap/pot.   | 100                              | North Atlantic right whale, WNA*+; Humpback whale, WNA*+; Minke whale, Canadian east coast; Harbor porpoise, GME/BF*; Harbor seal, WNA; Gray seal, Northwest North Atlantic.   |
| U.S. mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot.   | 30                               | None documented.   |
| U.S. mid-Atlantic eel trap/pot .....   | >700                             | None documented.   |
| Gulf of Maine, U.S. mid-Atlantic inshore lobster trap/pot.   | 10,613                           | North Atlantic right whale, WNA*+; Humpback whale, WNA*+; Fin whale, WNA*; Minke whale, Canadian east coast; White-sided dolphin, Western North Atlantic; Harbor seal, WNA.  |
| Gulf of Maine, U.S. mid-Atlantic offshore lobster trap/pot.  | 2,902                            | North Atlantic right whale, WNA*; Humpback whale, WNA*+; Fin whale, WNA*; Minke whale, Canadian east coast; White-sided dolphin, WNA; Harbor seal, WNA.  |
| Atlantic Ocean, Gulf of Mexico blue crab trap/pot.   | 20,500                           | Bottlenose dolphin, WNA coastal*; Bottlenose dolphin, Western GMX coastal; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, GMX Bay, Sound, & Estuarine*; Florida manatee, FL*+. |
| Southeastern U.S. Atlantic, Gulf of Mexico, Caribbean spiny lobster trap/pot.                                  | 750                              | Florida manatee, FL*+.   |
| <i>Stop seine/weir/pound fisheries:</i>  |                                  |  |
| Gulf of Maine herring and Atlantic mackerel stop seine/weir.   | 50                               | North Atlantic right whale, WNA*; Humpback whale, WNA*+; Minke whale, Canadian east coast; Harbor porpoise, GME/BF*; Harbor seal, WNA; Gray seal, Northwest North Atlantic.  |
| U.S. mid-Atlantic mixed species stop/seine/weir (except the North Carolina roe mullet stop net).               | 500                              | None documented.   |
| U.S. mid-Atlantic crab stop seine/weir.  | 2,600                            | None documented.   |
| <i>Dredge fisheries:</i>   |                                  |  |
| Gulf of Maine, U.S. mid-Atlantic sea scallop dredge.   | 233                              | None documented.   |
| U.S. mid-Atlantic offshore surfclam and quahog dredge.   | 100                              | None documented.   |
| Gulf of Maine mussel .....   | >50                              | None documented.   |
| U.S. mid-Atlantic/Gulf of Mexico oyster.   | 7,000                            | None documented.   |
| <i>Haul seine fisheries:</i>   |                                  |  |
| Southeastern U.S. Atlantic, Caribbean haul seine.  | 150                              | None documented.   |
| <i>Beach seine fisheries:</i>  |                                  |  |
| Caribbean beach seine .....  | 15                               | Florida manatee, FL+.  |

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

| Description of fishery  | Estimated No. of vessels/persons | Marine mammal species/stocks incidentally injured/killed |
|---|----------------------------------|--|
| <i>Dive, hand/mechanical collection fisheries:</i>                                    |                                  |  |
| Gulf of Maine urchin dive, hand/mechanical collection.                                | 50                               | None documented.   |
| Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection. | 20,000                           | None documented.   |
| <i>Commercial passenger fishing vessel (charter boat) fisheries:</i>                  |                                  |  |
| Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.        | 4,000                            | None documented.   |

\*Marine Mammal stock is strategic.  
 +Stock is listed as threatened or endangered under the ESA, or as depleted under the MMPA.

List of Abbreviations Used in Table 2:

- FL—Florida.
- GA—Georgia.
- GME/BF—Gulf of Maine/Bay of Fundy.
- GMX—Gulf of Mexico.
- NC—North Carolina.
- SC—South Carolina
- TX—Texas.
- WNA—Western North Atlantic.

**Classification**

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. This rule will require certain fishers to pay a fee to obtain an Authorization Certificate that will allow the taking of marine mammals incidental to commercial fishing operations.

Approximately 20,000 fishers were required to register under the old

section 114 regime and pay a \$30 fee. The fee under the new section 118 regime is reduced to \$25. This fee with respect to expected revenues is not significant.

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. The collections associated with these registration and reporting requirements have been approved by OMB under OMB control numbers 0648-0224 and 0648-0225.

Dated: December 19, 1995.

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