

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 FR 11040; February 26, 1979). The Coast Guard expects its economic impact to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Costs to the shipping industry from it, if any, will be minor and have no significant adverse financial effect on vessel operators. In addition, because of the limited number of vessels affected, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed in the Regulatory Evaluation, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

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

#### Federalism

The Coast Guard has analyzed regulations in accordance with the principles and criteria contained in Executive Order 12612, and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1C, this regulation is categorically excluded from further environmental documentation.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

#### Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

#### PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. Add temporary section 165.T01-008 to read as follows:

#### § 165.T01-008 Safety Zone: Sunken Fishing Vessel CAPE FEAR, Buzzards Bay Entrance.

(a) *Location.* The following area has been declared a safety zone. All waters within a 500-yard radius of the site of the sunken fishing vessel CAPE FEAR (O.N. D655734), in the entrance to Buzzards Bay in approximate position 41°-23' North and 71°-01' West.

(b) *Effective date:* This rule is effective from 12 midnight Friday, February 12, 1999, until 12 midnight Wednesday, March 31, 1999.

#### (b) Regulations.

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the COTP Providence.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene patrol personnel of the U.S. Coast Guard. These comprise commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: February 8, 1999.

**Peter A. Popko,**

*Captain, U.S. Coast Guard, Captain of the Port.*

[FR Doc. 99-4592 Filed 2-23-99; 8:45 am]

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 980724195-9038-02; I.D. 070798F]

RIN 0648-AK95

#### Final List of Fisheries for 1999; Update of Regulations Authorizing Commercial Fisheries Under the Marine Mammal Protection Act

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is publishing its final List of Fisheries (LOF) for 1999 as required by the Marine Mammal Protection Act (MMPA). In addition, NMFS is amending the regulations implementing section 118 of the MMPA by clarifying and updating existing regulations. The final LOF for 1999 reflects new information on interactions between commercial fisheries and marine mammals. Under the MMPA, NMFS must place a commercial fishery on the LOF into one of three categories based upon the level of serious injury and mortality of marine mammals that occurs incidental to that fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

**DATES:** The amendments to 50 CFR part 229 are effective on February 24, 1999. Changes to the List of Fisheries for 1999 are effective on March 26, 1999.

**ADDRESSES:** You may obtain registration information and materials and marine mammal reporting forms from the following regional offices:

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, Attn: Joyce Mochrie;

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, Attn: Don Peterson;

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

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Ursula Jorgensen.

You may send comments regarding the burden-hour estimates or any other aspect of the collection of information requirements contained in this final rule to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:**

Cathy Eisele, Office of Protected Resources, 301-713-2322; Kim Thounhurst, Northeast Region, 978-281-9138; Kathy Wang, Southeast Region, 727-570-5312; Irma Lagomarsino, Southwest Region, 562-980-4016; Brent Norberg, Northwest Region, 206-526-6733; Brian Fadely, Alaska Region, 907-586-7642. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1-800-877-8339 between 8:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**What Is the List of Fisheries?**

Under section 118 of the MMPA, NMFS (we) must publish, at least annually, an LOF that places all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs incidental to that fishery. The categorization of a fishery in the LOF determines whether participants in that fishery (you) are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

**How Does NMFS Determine Which Category a Fishery Is Placed In?**

You can find the definitions for the fishery classification criteria for Category I, II, and III fisheries in the implementing regulations for section 118 of the MMPA (50 CFR part 229). In addition, these definitions are summarized in the preambles to the final rule implementing section 118 (60 FR 45086, August 30, 1995), the final LOF for 1996 (60 FR 67063, December 28, 1995), and the proposed LOF for 1999 (63 FR 42803, August 11, 1998).

**How Do I Find Out Which Category a Specific Fishery Is In?**

This final rule includes two tables that list all U.S. commercial fisheries by category. Table 1 to the preamble of this document is a listing of all fisheries in the Pacific Ocean (including Alaska). Table 2 to the preamble of this

document is a listing of all fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Under section 118 of the MMPA, we must include all U.S. commercial fisheries on the LOF. You should contact one of the Regional Offices if you are aware of a fishery that is not included in these tables.

**Am I Required To Register Under the MMPA?**

If you are an owner of a vessel or gear engaging in a Category I or II fishery, you are required under 50 CFR 229.4 to obtain a marine mammal authorization from us in order to lawfully incidentally take a marine mammal in a commercial fishery.

**How Do I Register?**

If you participate in a fishery that does not have an integrated registration program, you must register through one of our Regional Offices (see ADDRESSES). The fee for obtaining a new or renewed authorization each year is \$25. Upon receipt of a completed registration, we will issue vessel or gear owners a decal to display on their vessel and an authorization certificate that must be in the possession of the operator while fishing. The procedures and fees associated with registration differ between Regions. Special procedures and instructions for registration in these Regions are described in the preamble to the final LOF for 1998 (63 FR 5748, February 4, 1998).

For some fisheries, we have integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are registered automatically under the MMPA and are not required to pay the \$25 registration fee.

**Which Fisheries Have Integrated Registration Programs?**

We have implemented integrated registration programs in the Alaska Region, Northwest Region, and Northeast Region. The following fisheries have integrated registration programs under the MMPA: all Alaska Category II fisheries; all Washington and Oregon Category II fisheries; and three Atlantic fisheries (the Gulf of Maine, U.S. mid-Atlantic lobster fishery, the Atlantic squid, mackerel, butterfish trawl fishery; and the Northeast sink gillnet fishery). Special procedures and instructions for registration in these integrated fisheries are described in the preamble to the final LOF for 1998 (63 FR 5748, February 4, 1998).

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

The Regional Offices send annually renewal packets to participants in Category I or II fisheries that have previously registered with us; however, it is your responsibility to ensure that your registration or renewal forms are submitted to us at least 30 days in advance of fishing. If you have not received a renewal packet by January 1, or are registering for the first time, you should request a registration form from the appropriate Regional Office (see ADDRESSES).

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

If you are a vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery, you must comply with 50 CFR 229.6 and report all incidental injuries or mortalities of marine mammals that occur during commercial fishing operations. You can find instructions for how to submit reports at 50 CFR 229.6(a).

**Am I Required To Take an Observer Aboard My Vessel?**

If you are a fisher participating in a Category I or II fishery, you are required to accommodate an observer aboard your vessel(s). You can find the observer requirements at 50 CFR 229.7.

**Comments and Responses**

We received nine letters of comment on the proposed LOF for 1999 during the 90-day public comment period.

*Comments on Fisheries in the Southwest Region: Comments on the Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line Fishery*

*Comment 1:* Two commenters believe that NMFS should recategorize the Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line Fishery from Category III to Category II. The fact that NMFS has not conducted surveys necessary to determine stock abundance and distribution, and therefore to calculate Potential Biological Removal (PBR) levels for Hawaiian stocks should not be used as a rationale for failing to classify fisheries that interact with animals as Category I or II fisheries.

Given that there is no PBR level calculated for Risso's dolphins, that there are fishery interactions that have not been quantified because there is no definition of serious injury available, and that there is a complete lack of

observer coverage in other fisheries (e.g., gillnet and purse seine operations) that may interact with this stock, the commenters are concerned that this might be a Category I fishery.

Another commenter adds that NMFS has data that demonstrate observed mortality, has guidance from experts on what constitutes serious injury, and has the recommendation of the Pacific Scientific Review Group (SRG) to support a reclassification of this fishery to a Category II fishery.

*Response:* We recognize that takes of marine mammals are occurring incidental to the operations of the Hawaii swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery; however, there is significant uncertainty regarding the level of interactions that are occurring, the specific stocks that are involved, and the number of injured animals that die as a result of their interaction with this fishery. Because information regarding incidental takes in this fishery became available in only summer 1998, we have not been able to fully assess the categorization of this fishery in developing the LOF for 1999.

We have expanded observer coverage in this fishery and are in the process of developing expanded take estimates for this fishery. We plan to conduct a thorough review of these estimates and of incidental marine mammal injury information in the development of the proposed LOF for 2000 (see response to Comment 16). The Hawaii longline fishery will be further considered for recategorization as a Category II fishery at that time.

Although this fishery will currently remain in Category III, we will continue to have the authority to place observers on Hawaii longline vessels. In addition, participants in this fishery are required to submit vessel logbooks, to report all interactions with marine mammals, and to obtain a limited entry permit to participate in this fishery.

#### *Comments on Fisheries in the Northwest Region: Comments on Tribal Gillnet Fisheries in Washington*

*Comment 2:* One commenter notes that tribal gillnet fisheries in the state of Washington should be included in the LOF even if NMFS no longer places observers aboard these formerly Category I and II fisheries.

*Response:* Tribal fisheries are conducted under the authority of Indian treaties rather than under the MMPA. The MMPA's registration and Authorization requirements do not apply to treaty Indian fishers operating in their usual and accustomed fishing areas. Since including tribal fisheries in

the LOF would require them to obtain an Authorization Certificate, we do not include tribal fisheries in the LOF. A complete explanation for the exclusion of treaty Indian fisheries can be found in the final rule implementing section 118 of the MMPA (60 FR 45096, August 30, 1995).

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

*Comment 3:* One commenter notes that there are several fisheries operating in Alaska that may be interacting with marine mammals, yet no observer coverage is possible due to their listing as Category III fisheries. These include, but are not limited to, the salmon set gillnets in Prince William Sound; the Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet fishery; and herring gillnets.

*Response:* We have marine mammal interaction data from an observer program conducted in 1990 in the Prince William Sound (PWS) salmon set gillnet fishery. Observed rates of harbor seal and marine mammal mortality for this fishery warrant a Category III designation. Salmon set gillnet fisheries in the Yukon-Kuskokwim Delta, Norton Sound and Kotzebue areas mostly comprise of Alaskan Natives. Marine mammals caught incidental to commercial fishing by Alaskan Natives and retained for subsistence use have not been considered in fishery categorization. However, we are currently reviewing this policy. There are few reports of mortalities or serious injuries from these fisheries (see response to Comment 6).

*Comment 4:* One commenter doubts that no interactions take place between the pot fisheries and humpback whales and other large cetaceans in Alaska. There are large numbers of entanglements of humpback whales and right whales in the buoy lines used by the lobster fishery in the northeastern United States. In Alaska, it would seem that lack of effort more than any other factor leads to lack of reporting of entanglements of whales in Alaska.

*Response:* No humpback whale mortalities were observed during the 1990–97 Bering Sea and Gulf of Alaska finfish pot fisheries monitored by our observers. During 1997, there were three reports of humpback whales entangled in lines with attached buoy in southeast Alaska, but these were deemed likely to be observations of the same whale based on the limited information in the reports. Because of the limited information in the reports, it was not possible to attribute these interactions to a particular fishery. Details of these

interactions can be found in the annual Stock Assessment Reports (SARs).

*Comment 5:* One commenter believes that failure to report interactions in logbooks cannot be considered sufficient grounds for determining categories, and consideration should be given to upgrading the category if the gear type is one that is known to entangle certain species of marine mammals and if those species are present coincident with the fishery activities.

*Response:* We agree. The logbook reporting program conducted during 1990–93 was replaced under the 1994 MMPA amendments with a fisher self-reporting program, which requires the reporting of marine mammal injuries or death within 48 hours of completion of a fishing trip, regardless of fishery categorization. Logbook reports of mortality and serious injury were considered to be underestimates of incidental mortality based on comparisons to observer program data.

The reports of injuries and mortalities occurring incidental to fishing from fisher self-reports collected during 1996–97 were significantly fewer than those reported during the logbook program for Alaskan fisheries. Data collected directly through observer programs are thus preferred for categorization. Beginning in 1998, the Alaska Region will exclude fisher self-report estimates for calculation of estimated minimum annual fisheries-related mortality. In the absence of, or in addition to, observer data, we also base fishery categorizations on stranding data, evaluation of fishing techniques, gear used, seasons and areas fished, and distribution of marine mammals within the area.

*Comment 6:* One commenter notes that additional Category II fisheries in Alaska that may be interacting with marine mammals are unobserved and pose some concern. These include the Cook Inlet salmon drift and set gillnets that may be interacting with the beleaguered Cook Inlet beluga whale stock.

*Response:* We agree. Because of the immediacy of the Cook Inlet beluga whale decline, we have deferred a planned rotational monitoring program to observe eight Category II salmon net fisheries within Alaska in order to observe Cook Inlet salmon drift and set gillnet fisheries during 1999 and 2000.

*Comment 7:* One commenter questions the utility of definitions in the Tier system for categorizing fisheries if it is not possible to place observers on unobserved Category II fisheries because they are considered low priority as Category II fisheries. Perhaps some

consideration should be given to listing fisheries as Category I fisheries if they take less than 50 percent of the PBR level of any one stock but they have historically interacted with species listed under the Endangered Species Act (ESA) (e.g., Steller sea lions).

*Response:* We agree that it is difficult to prioritize fisheries nationally for observation, given the available funds. We recently convened a workshop to attempt to establish a prioritization scheme for Category I and II fishery observer programs. We concluded that the top priority for observation were Category I fisheries required for observation under a Take Reduction Plan (TRP). A second tier of priority was Category I fisheries in the monitoring/compliance phase of a TRP, and unobserved Category II fisheries.

The MMPA also mandates that fisheries that take ESA-listed species have the highest priority for observation. ESA-listed species already have conservative PBR levels associated with them by using 0.1 as a recovery factor; thus, further adjusting the categorization criteria could be inadvertently restrictive.

#### *Comments on the Southeast Alaska Salmon Purse Seine Fishery*

*Comment 8:* One commenter notes that two factors chiefly determine the classification of a fishery: the number of incidental takes and the allowable PBR level. Due to a lack of quality data for the inputs to the PBR formula, it is possible for a fishery to have minimal or even a singular incidental take in 8 years but to still meet the criteria for a Category II fishery (for example, the Southeast Alaska salmon purse seine fishery). The formula that determines the percent PBR (and so the category for the fishery) has three inputs: population size, productivity rate, and the recovery factor. Many of the inputs to the formula are unknown or approximated using theoretical values. Many of these values are very conservative in light of current population trends. Other inputs, such as the recovery factor, are management designations that may not reflect current population status. The output of a formula cannot be more precise than the sum of the inputs. Imprecise inputs can result in an improper classification of a fishery.

*Response:* This comment has two parts: First, concern about calculation of the PBR level and how uncertainties in data are treated and, secondly how the PBR level is used in the fisheries classification process. The MMPA mandates that we not allow marine mammal stocks to become depleted and that stocks be allowed to recover to or

remain at an optimum sustainable population size. We have defined this as a population size between carrying capacity and the maximum net productivity level (for marine mammals it is assumed to be between 50–85 percent of carrying capacity). The intent of using a PBR level mortality-based management scheme is to allow determination of an appropriate human-related mortality level that could be sustained, while still allowing marine mammal populations to recover to or remain above their maximum net productivity level.

Inputs into the PBR formula will have uncertainties or biases that are known or can be estimated (i.e., of population counts) and variability or biases that are unknown. The PBR level achieves a suitably conservative estimate in spite of potential bias and uncertainty in the data. Because the fishery classification criteria are defined relative to a stock's PBR level and because this level can be very low for some endangered stocks, commercial fisheries that incur minimal serious injuries or mortalities may be classified as Category I or II. However, fisheries are also categorized based on evaluation of fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and the species and distribution of marine mammals in the area. In the absence of observer data, the likelihood that a small increase in PBR level would change the categorization of a fishery is remote. It is fully in keeping the concept of PBR that populations should be increasing if the mean annual mortality does not exceed the PBR level. However, the intent of Congress, as expressed in the MMPA, is that fishery mortalities be reduced much further than PBR to a level approaching a zero mortality rate. See response to Comment 10.

*Comment 9:* One commenter believes that classification as a Category II fishery is a significant burden to fishermen and constitutes an indictment. Additionally, vessels in a Category II fishery must take observers upon request, a requirement which brings up such issues as size of vessel, space, liability, direct and indirect costs. Any participant in a Category II fishery will also be required to comply with any applicable TRPs.

*Response:* Participants in Category II fisheries are required to have a Marine Mammal Authorization Program (MMAP) Certificate authorizing incidental serious injuries or mortalities of marine mammals during commercial fishing authorizations. In Alaska, this process is automatic and free of charge to the permit holder, thus greatly

minimizing any burden to the fishery. In addition, participants must carry an observer if we request you to do so.

Fishery categorization does not constitute an indictment. Rather, it is a comparison of the best information available that relates an estimated annual incidental marine mammal serious injury and mortality rate to a stock's population status. This is an effective means by which to focus limited resources on the most critical areas of interaction.

*Comment 10:* One commenter believes that the Southeast Alaska salmon purse seine fishery should be reclassified as a Category III fishery and that it has been unduly singled out as the only Category II purse seine fishery in Alaska. This fishery is a Category II fishery regarding the central north Pacific stock of humpback whales, based on one incidental take in the last 8 years. Given that the population is stable and increasing, using the theoretical cetacean maximum net productivity rate of 4 percent and a recovery factor of 0.1 is unduly conservative. Because there has been only one take in 8 years, the mean annual mortality rate should be 0.125, rather than the 0.2 representing one take in 5 years, as is reported in the SARs.

*Response:* With the exception of two harbor seal mortalities in 1993, we have neither received reports of serious injury or mortality nor of stranding entanglements attributable to other Alaskan purse seine fisheries. However, this is likely to be an underestimate (see response to Comment 5). Based on the reported humpback whale entanglement, by limiting the categorization to the southeast Alaska salmon purse seine fishery, we appropriately limited our concern to a specific fishery.

It is consistent that marine mammal populations should increase if the total mean annual mortality does not exceed the PBR level. We revised the central north Pacific humpback whale population estimate in the draft 1998 SARs based on newly available data, resulting in an increase of the minimum population estimate relative to that published in the 1996 SAR. However, the draft 1998 SAR also notes that, while there was qualitative evidence of an increase, there was no quantitative evidence. However, the PBR level was appropriately revised from 2.8 to 7.4 whales per year.

We agree that it is ideal to use a maximum net productivity rate ( $R_{max}$ ) based on reliable stock-specific information rather than a default value, which is 4 percent in the case of cetaceans. This information does not

currently exist for the central north Pacific stock of humpback whales, and it is extremely difficult to collect such data. Higher  $R_{\max}$  estimates have been generated from the Gulf of Maine (6.5 percent); however, neither the Pacific nor Alaska SRGs recommended applying this to any Pacific Ocean humpback whale stock. As part of efforts to continually improve the PBR-based management process, we are conducting a review of the veracity and applicability of current  $R_{\max}$  default values, and we will adopt new guidelines if appropriate.

The intent of the recovery factor is to allow for uncertainty and unknown estimation errors, and also to accommodate additional information to allow for management discretion as appropriate with the goals of the MMPA (Barlow *et al*, 1995). Based on simulations, we estimated that a recovery factor of 0.1 would not create more than a 10 percent increase in population recovery time for endangered stocks. The Alaska SRG has recommended, and we agree, to retain the use of 0.1 for this humpback whale stock. This is due to at least four factors: (1) qualitatively, it seems that this stock of humpback whales is increasing, but there is no quantitative estimate; (2) uncertainty of fisheries takes; (3) uncertainty of stock structure; and (4) its endangered species status. However, we prefer to utilize the most appropriate recovery factor values that are not inappropriately restrictive. Thus, an effort is currently underway to develop a more objective system to adjust recovery factors. This will also include an analysis of the appropriateness of using a recovery factor of 0.1 for endangered species.

We currently use the most recent 5 years of data available for mortality calculations. Thus, we calculated the minimum estimated mean annual mortality as 1 mortality in 5 years, or 0.2 per year. This is presumed to be a minimum estimate. Another 1994 entanglement could have been due to this fishery rather than to the southeast Alaska drift gillnet fishery (see response to Comment 11), which would result in 0.4 mortalities per year, or 5 percent of the PBR level. As previously stated, if the estimated minimum total annual mortality rate (i.e., all human-caused mortalities, 1.2 per year for this stock) is less than the PBR level, the stock should be increasing. However, the intent of Congress, as expressed in the MMPA, is that fishery mortality be reduced much further than PBR to a level approaching a zero mortality rate. The current fisheries-related mortality estimate (across all fisheries interacting

with this stock) is 1.0 whales per year. This take level does not exceed the PBR level, but is in excess of 10 percent (0.74) of the PBR level, thus justifying application of tier 2 LOF criteria. In the absence of adequate estimates of fisheries-related marine mammal mortality and serious injury, small increases in the PBR level are unlikely to result in the reclassification of a fishery. We are confident that the best available data were incorporated into the PBR equation for this stock of humpback whales.

#### *Comments on the Southeast Alaska Salmon Drift Gillnet Fishery*

*Comment 11:* One commenter believes that the southeast Alaska salmon drift gillnet fishery should be reclassified as a Category III fishery. This fishery interacts with seven marine mammal stocks, but mortality only exceeds 1 percent of the PBR level for the central north Pacific stock of humpback whales and southeast stock of harbor porpoise. For the harbor porpoise, the total annual mortality across all fisheries is less than 10 percent of the PBR level, so all fisheries interacting with this stock should be placed in Category III. A 1994 report of an entanglement in Chatham Strait was attributed to this fishery, but this fishery does not occur in Chatham Strait. Why was a humpback whale that was released trailing gear in 1996 presumed to have been a mortality?

*Response:* Calculation of a PBR level provides a useful method for quantifying the effect of fisheries-related mortality relative to the size of marine mammal stocks. However, in the absence of adequate estimates of fisheries related mortality, we evaluate additional factors to categorize fisheries (see response to Comment 5). The southeast Alaska salmon drift gillnet fishery is known to interact with six stocks of marine mammals. For a discussion of the data and values used in the calculation of the central north Pacific stock of humpback whales, please see the response to Comment 10. Fisheries-related and other sources of serious injury and mortality are summarized in the Alaska SARs, rather than the LOF. As reported in the 1998 draft SAR, in 1994 a humpback whale in weakened condition was reported entangled in fishing nets with floats attached in Chatham Strait. This entanglement was attributed to the salmon drift gillnet fishery. The SAR goes on to state, however, that this could have been just as likely attributable to the southeast Alaska salmon purse seine fishery. In 1996, a humpback whale was reported

entangled and released trailing salmon drift gillnet gear. These entanglements were presumed, but not known, to have resulted in mortalities. These entanglements were presumed to have resulted in mortalities because both animals were released trailing gear that was likely to impede or prevent the animals' ability to move or feed. The classification of either the southeast Alaska salmon purse seine or the southeast Alaska salmon drift gillnet fishery would remain unchanged regardless of whether this entanglement was considered to result in a mortality. See response to Comment 16.

We originally classified this fishery based on a minimum annual estimated fisheries' mortality of harbor porpoise greater than 10 percent of the PBR level based on a presumed single Alaskan stock of harbor porpoise (see 1995 Alaska SAR). In 1996, we determined that harbor porpoise were more appropriately managed as three separate stocks within Alaska (Southeast Alaska stock, Gulf of Alaska stock, and Bering Sea stock). Thus, from a biological standpoint it is now even more critical to have reliable estimates of fishery-related mortality affecting each stock. Additionally, logbook reports and fisher self reports are considered to be underestimates of actual mortality (see response to Comment 5). Based on the gear type used, the temporal and spatial overlap of this fishery with the southeast Alaska stock of harbor porpoise, and the estimated minimum annual mortality rate of humpback whales, a Category II classification is appropriate.

*Comment 12:* One commenter believes that the Bristol Bay salmon drift gillnet fishery should be reclassified as Category III. This fishery has interactions with seven marine mammals, but mortality attributed to this fishery does not exceed 1 percent of the PBR level of any of the stocks.

*Response:* Concern over estimated annual fisheries-related mortality of the Bering Sea stock of harbor seals (6.7 percent of the PBR level, of which 5.5 percent is attributable to this fishery) and the endangered western stock of Steller sea lions (8.9 percent of the PBR level, of which 0.8 percent is attributable to this fishery), which are considered to be minimum estimates, warrant a Category II classification for the Bristol Bay salmon drift gillnet fishery. In the absence of observer data, we do not believe that this fishery should be reclassified in Category III given the gear type and temporal and spatial overlap with these marine mammal stocks.

*Comments on Fisheries in the Southeast Region: Comments on Gulf of Mexico Menhaden Purse Seine Fishery*

*Comment 13:* One commenter agrees that the three Gulf coastal stocks of bottlenose dolphin should be combined for purposes of categorization; however, the commenter added that the Gulf of Mexico Outer Continental Shelf (OCS) stock should be combined as well. This would result in a PBR level of 586 individuals. In addition, the commenter notes that dolphin mortality in this fishery is a highly isolated event and a linear extrapolation of observer data grossly overestimates the bycatch across the entire fishery. For these reasons, the commenter believes the Gulf of Mexico menhaden purse seine fishery should remain in Category III.

*Response:* We agree that the stock structure for bottlenose dolphins, as defined in the SARs, is tentative and that, as more information regarding Gulf of Mexico bottlenose stock structure becomes available, the SARs will be revised accordingly. However, the SARs represent the current, best information available, and we must defer to them in order to ensure a risk-averse approach to LOF designations.

We recognize the possibility that the current divisions of the coastal stock(s) may not be the most biologically appropriate and that some mixing with OCS stock(s) may occur; therefore, we proposed to place the Gulf of Mexico menhaden fishery in Category II, rather than the otherwise justifiable Category I.

The best information available indicates that at least three stocks are present in the coastal zone and that animals inhabiting the OCS region are from separate and distinct stock(s). However, if NMFS were to use a PBR level of 586 individuals as suggested, the 68 estimated takes still exceed the 10 percent threshold and warrant a Category II designation. Additionally, a study of the fishery by J.Y. Christmas (1960) indicates that capture rates of bottlenose dolphin in the menhaden fishery at that time were similar to that recorded in the Louisiana State University bycatch study.

We are confident that the estimate of 68 dolphins taken annually in the fishery is reasonable and that elevation to Category II is justified at this time, and believe that an observer program designed to estimate the level of dolphin mortality is necessary to further refine this estimate.

*Comment 14:* One commenter believes that the Gulf of Mexico menhaden purse seine fishery should be classified as a Category I fishery, rather than as a Category II fishery, because the

mortality to this stock exceeds its PBR level. NMFS' rationale for placing this fishery in Category II is that stock structure is being re-examined; however, discussions of the Atlantic SRG focused on the need to re-examine the stock structure of several other stocks of coastal dolphins, not including the Western coastal stock with which this fishery interacts. The commenter believes that this fishery should be placed in Category I and that a take reduction team should be established for bottlenose dolphins, as is required by the MMPA.

*Response:* With respect to the Gulf of Mexico menhaden fishery, we believe that the uncertainty with respect to Gulf of Mexico bottlenose dolphin structure basin-wide, as well as the fact that the observer program in which the known dolphin takes were recorded was not specifically designed to estimate dolphin mortality, provide justification for placing the fishery in Category II rather than Category I. If we receive new information to indicate that the western coastal stock is an isolated stock, and a mortality estimate (based on a program designed to achieve an estimate of dolphin mortality) indicates that mortality levels exceed 50 percent of the PBR level, we will reclassify this fishery as a Category I fishery.

Our Southeast Regional Office is working in cooperation with industry to develop take reduction strategies aimed at reducing marine mammal bycatch in this fishery.

*Comment 15:* One commenter supports NMFS' proposal to reclassify the Gulf of Mexico menhaden purse seine fishery from a Category III to a Category II fishery but urged NMFS to re-examine the stock structure of the three Gulf coastal stocks, to increase the observer coverage and collection of effort data, and to improve the bycatch estimate for this fishery in order to more accurately classify this fishery.

*Response:* We are actively involved in a multi-method approach to determining stock structure of bottlenose dolphins in the mid-Atlantic. The mid-Atlantic area is the current focus for our bottlenose dolphin research because of the depleted listing of the presumed coastal migratory stock(s) and because of the high bycatch rate indicated by the level of fishery-related strandings recorded in the mid-Atlantic states. After this research is complete, we intend to apply the techniques used in the mid-Atlantic to assess bottlenose stocks in the Gulf of Mexico.

We are also working to establish an observer program designed to estimate the level of dolphin mortality associated

with the Gulf of Mexico menhaden fishery. Accurate effort data already are routinely collected, independent of an observer program.

*Comments on the Atlantic Ocean, Caribbean, and Gulf of Mexico Large Pelagics Longline Fishery*

*Comment 16:* One commenter requests that NMFS revise the categorization of the Atlantic Ocean, Caribbean, and Gulf of Mexico large pelagics longline fishery from Category I to Category II. The Category I classification for this fishery was based on estimates of annual serious injuries and/or incidental mortalities of pilot whale interactions based on the PBR level set in the 1994 SARs. The latest NMFS estimate of annual serious injury and/or incidental mortality for pilot whales by this fishery is 5.5 animals per year, representing only 12 percent of the PBR level for pilot whales (45 animals).

*Response:* The present Category I classification for the Atlantic pelagic longline fishery is based on an estimated average annual pilot whale mortality of 5.5 pilot whales between 1992 and 1995. Because of the timing and location of these mortalities and lack of photo-documentation, we do not know whether some or all of these whales may have been short-finned pilot whales, *Globicephala macrorhynchus*, which have a PBR level of 3.7 animals per year. The Atlantic SRG, an external panel convened to advise us on the SARs, advised adopting the risk-averse strategy of assuming that an observed mortality or serious injury of a pilot whale may be attributed to either species. Based on an annual short-finned pilot whale mortality of 5.5 animals per year, the Atlantic pelagic longline fishery exceeds the PBR level of 3.7 animals per year; thus, the Atlantic pelagic longline fishery fits the criteria for a Category I fishery.

The annual marine mammal bycatch rate in this fishery is based only on incidental mortalities and does not include those animals that are incidentally injured. Based on observer information and fisher reports, we know that many animals are hooked or entangled in this fishery and subsequently released alive. Some percentage of these injured animals sustain serious injuries that will likely result in death.

Under the MMPA, we are required to consider both incidental mortalities and serious injuries when determining a fishery's annual marine mammal bycatch level. We are currently developing biological criteria for determining what constitutes a serious injury to a marine mammal that is

injured incidental to commercial fishing operations. These guidelines will be based on the results of a workshop that we convened in April 1997 to collect expert opinion on what types of injuries should be considered "serious injuries."

Our consideration of incidental marine mammal injuries that occur incidental to the Atlantic pelagic longline fishery will result in an annual mortality and serious injury rate which is higher than the current level (which is based only on incidental mortalities).

*Comment 17:* One commenter requests that NMFS review and revise the species listed for each fishery in the LOF. In addition, the commenter requests that NMFS delete species that have not been documented or otherwise verified to have been seriously injured and/or incidentally killed by the U.S. Atlantic pelagic longline gear. Specifically, the commenter requests that the following species/stocks be removed from the list of species that interact with the Atlantic pelagic longline fishery: Humpback whale, Western North Atlantic (WNA); Minke whale, Canadian east stock; Common dolphin, WNA, Striped dolphin, WNA, Bottlenose dolphin, WNA offshore; and Harbor porpoise, Gulf of Maine/Bay of Fundy.

*Response:* In the development of the proposed LOF for 2000, we will conduct a thorough review of the species and/or stocks that interact with Atlantic Ocean, Gulf of Mexico, and Caribbean fisheries and propose any needed changes to the list of species and/or stocks that interact with the Atlantic pelagic longline fishery at that time.

In considering which stocks should be listed in the LOF as interacting with the Atlantic pelagic longline fishery, the commenter notes the differences between the list of species/stocks that are listed in the LOF and those listed in the SARs. As described in the proposed LOF (63 FR 42803, August 11, 1998), the LOF tables list the marine mammal species/stocks that are incidentally killed or injured (including non-serious injuries) in each fishery based on observer data, logbook data, stranding reports, fishers' reports, anecdotal reports, and other sources of information. The criteria for listing a species/stock in the LOF are much more broad than in the SARs, which often only describes stocks which have incurred mortalities and serious injuries. The list of species/stocks in the LOF includes all species or stocks known to incur injury or mortality for a given fishery; however, not all species or stocks identified are necessarily independently responsible for a fishery's categorization.

*Comment 18:* One commenter requests that NMFS sub-divide the Atlantic Ocean, Caribbean, and Gulf of Mexico pelagic longline fisheries for swordfish, tuna and sharks into three regional fisheries on the LOF. The pelagic longline fisheries within the Exclusive Economic Zone should be divided into north and south regions with a boundary at Cape Hatteras, NC. The pelagic longline fishery in the Gulf of Mexico should be categorized separately.

Separating these fisheries by fishing region would facilitate establishing a standardized process for monitoring effort, estimating serious injury and incidental mortality rates and evaluating the effectiveness of take reduction methods.

In response to similar previous requests from the commenter, NMFS' response was that the Atlantic Offshore Cetacean Take Reduction Team would be the appropriate forum to discuss this issue; however, this alternative was not discussed during the Team's meetings. In addition, NMFS' previous response indicated that nearly all of the participants moved across the proposed boundaries. The commenter disagrees and thinks that NMFS should review available effort data, which should indicate that nearly all of the participants stay within the proposed boundaries.

*Response:* We continue to find that fishers in the Atlantic pelagic longline fishery move across the proposed boundaries, as do many of the protected species impacted by the fishery. In addition, this fishery is currently managed on a fishery-wide basis for fishery management purposes, and we believe it is appropriate to maintain the same fishery definitions across NMFS offices wherever possible. For these reasons, we believe that it is not appropriate to subdivide the pelagic longline fishery at this time.

#### *Comments on Mid-Atlantic Coastal Gillnet Fishery*

*Comment 19:* One commenter questions NMFS' assertion that there is no additional information on the Mid-Atlantic coastal gillnet fishery's interactions to justify recategorizing it as a Category I fishery. Data presented to the Mid-Atlantic Take Reduction Team in June 1997 documented stranded bottlenose dolphins with evidence of net marks. Between February 19 and May 30, 1997, 15 of the 31 carcasses whose conditions permitted analysis showed evidence of entanglement-related mortality. These, along with subsequent strandings, certainly exceed 50 percent of the PBR level of 25 for

coastal bottlenose dolphins and justify this fishery being listed in Category I.

*Response:* Although data presented to the take reduction team indicate high take levels of bottlenose dolphins in 1998, the 5-year average dolphin mortality attributable to interaction with monofilament nets, as reported in available stranding data, is 12.5 animals per year, which is exactly 50 percent of the PBR level. These takes cannot be directly ascribed to the Mid-Atlantic coastal gillnet fishery because other fisheries, such as haul seines and pound nets, could also leave net marks on dolphin or porpoise carcasses.

We believe that it is appropriate to maintain the Category II designation until more definitive data are available. This fishery will continue to be observed and participants will be subject to all of the requirements of participants in Category I fisheries. The Mid-Atlantic coastal gillnet fishery observer program has recently recorded interactions with bottlenose dolphins. Provided that we are able to achieve representative sampling of the fishery, these data, once analyzed, will be used instead of the less definitive stranding data. We anticipate that these mortality estimates will be available before publication of the proposed LOF for 2000. We will propose a recategorization of this fishery to Category I at that time, if appropriate.

#### *Comments on North Carolina Inshore Gillnet Fishery*

*Comment 20:* One commenter disagrees with NMFS' decision to retain the North Carolina inshore gillnet fishery as a Category III fishery when evidence indicates that the North Carolina inshore gillnets interact with bottlenose dolphins. While it is true that stock structure is being reconsidered for this stock, the fishery will still be exceeding 10 percent of the PBR level regardless of whether the current stock structure is retained. This fishery, along with other coastal fisheries that are operating in the area where stranded animals are found with evidence of net entanglement, should be listed as Category I or II fishery.

*Response:* There are very few marine mammal strandings reported from inshore waters; thus, the existing category III designation is currently appropriate. We are currently in the process of reviewing stranding records (e.g., verifying exact location data) to ensure that an accurate count is available from which to assess the percentage of the PBR level which is attributable to gillnet interactions in inshore waters. In addition, we are expending some observer effort in these

waters. Although we believe that the interaction rate is fairly low, if any takes are observed in inshore waters, we will develop an estimate of the level of take in this inshore component of this fishery and use it to re-assess the categorization of the fishery.

*Comments on Atlantic Fisheries Interacting with Coastal Bottlenose Dolphins*

*Comment 21:* One commenter is concerned that NMFS does not have adequate population abundance estimates and stock structure information for coastal bottlenose dolphins to allow it to accurately assess the PBR level for this stock and to determine bycatch levels in the Atlantic Ocean, Gulf of Mexico blue crab trap/pot fishery, the North Carolina inshore gillnet fishery, and other fisheries. The commenter notes that it is a violation of the MMPA for NMFS to continue to allow fisheries to take bottlenose dolphins in the absence of this information and any take reduction plan. NMFS must immediately work to obtain accurate population abundance estimates and stock structure information for bottlenose dolphin.

*Response:* We recognize the importance of these issues and have committed resources to developing accurate abundance estimates and to obtaining critical stock structure information. We are committed to answering complex bottlenose dolphin stock structure questions and, wherever possible, are devoting our limited resources toward addressing these issues.

We have been operating an observer program in nearshore waters since early 1998. By spring 1999, marine mammal bycatch data from this observer program will be available and marine mammal bycatch estimates will be developed. We plan to use these data, in conjunction with the best available data on abundance (i.e., information contained in the most recent SAR), and will consider convening a take reduction team at that time, if appropriate.

*Comments on North Carolina Haul Seine Fishery*

*Comment 22:* One commenter supports NMFS' proposal to change the name of the "North Carolina haul seine fishery" to the "Mid-Atlantic haul seine fishery."

*Response:* We agree and are changing the name of the "North Carolina haul seine fishery" to the "Mid-Atlantic haul seine fishery."

*Comments on the Mid-Atlantic, Southeastern U.S. Atlantic, Gulf of Mexico Shrimp Trawl Fishery*

*Comment 23:* One commenter believes that the Mid-Atlantic, Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery should be elevated to Category II based on observations of bottlenose dolphins being killed by vessels in this fishery. Given the low PBR level for the stock and the lack of observer coverage, the commenter expects that this fishery is killing more than 10 percent of the PBR level for the stock.

*Response:* Although there have been approximately 50,000 hours of observer coverage in the shrimp trawl fishery, no incidental mortalities of bottlenose dolphins in this fishery have ever been recorded by observers. We are aware that occasional mortalities do occur, but it is unlikely that the 5-year average number of known interactions with any one dolphin stock exceeds 10 percent of the PBR level. However, we are currently conducting a review of dolphin mortality records in this fishery and will re-evaluate the categorization of this fishery to ensure that it is categorized appropriately.

*Comments on Fisheries in the Northeast Region: Comments on the Atlantic Herring Midwater Trawl Fishery*

*Comment 24:* Several commenters wrote in support of including the herring midwater trawl fishery in Category II due to the potential for incidental take of marine mammals, particularly harbor porpoise from the Gulf of Maine/Bay of Fundy stock. The New England Fishery Management Council (NEFMC) expressed support of a Category II listing. In addition to the reasons listed in the Proposed 1999 LOF, the NEFMC Marine Mammal Committee noted that the practice of pair trawling has increased over the last several years and that vessels fishing in pairs in other fisheries have accounted for takes of marine mammals and sea turtles. Vessels fishing singly for herring also may be associated with some level of harbor porpoise bycatch given the close predator/prey relationship between porpoise and herring.

*Response:* We agree and are adding the Atlantic herring midwater trawl (including pair trawl) fishery to the LOF as a Category II fishery.

*Comment 25:* One commenter notes that the Harbor Porpoise Take Reduction Plan goals could be compromised by takes of porpoise in fisheries such as the herring trawl fishery, which are not regulated by the Plan, and stated that such takes would

undermine the efforts by the sink gillnet fishery (and other parties involved in the take reduction plan development process) to reduce takes of porpoise. The commenter also recommended that NMFS initiate observer coverage in the herring trawl fishery to investigate the potential for porpoise takes.

*Response:* We agree. If takes of harbor porpoise are reported from fisheries other than the fisheries currently regulated by the harbor porpoise plan, this information will be presented to the take reduction team(s) for their consideration. The Category II listing gives us the authority to place observers on this fishery.

*Comment 26:* One commenter states that the herring trawl fishery was being reclassified using a "guilty until proven innocent" standard and noted that NMFS do not have data linking the Atlantic herring midwater trawl fishery to any marine mammal injuries or mortalities.

*Response:* Section 118 of the MMPA provides for flexibility in fishery classifications. In the case of the herring fishery, data on food habits of harbor porpoise and other marine mammal species, the overlap of distribution of the herring fishery and several of these marine mammal species, and documented takes of small cetaceans and pinnipeds in gear used in the herring fishery is sufficient to warrant classification of this fishery in Category II.

*Comment 27:* One commenter notes that a new herring fishery management plan has just been adopted by the NEFMC which allows for the use of observers in the Atlantic herring fishery. Before imposing an additional regulatory burden on the herring fleet, as the proposal to register herring midwater trawlers as Category II fishermen would do, the commenter requested that NMFS and the NEFMC should expend the effort to develop data through other available means.

*Response:* We agree that there is authority under the Magnuson-Stevens Fishery Conservation and Management Act to place observers on vessels. However, the MMPA specifically requires that we review the LOF annually to assess a fishery's level of interactions with marine mammals. Through this process, we have determined that this fishery should be reclassified for several reasons explained earlier (see response to comments 24-26). This reclassification should not place a significant regulatory burden on fishery participants. As a result of this action, participants in this fishery will be required to register and to accommodate an observer if



requested. The Category II classification was meant to be an interim stage that allows collection of data to determine the level of take more accurately.

*Comment 28:* Due to the potential for take of marine mammals in bottom trawl gear targeting herring, one commenter disagrees with the inclusion of bottom trawl vessels targeting herring in the Category III listing for the North Atlantic bottom trawl fishery.

*Response:* We agree that takes of marine mammals have been observed in the bottom trawl fishery; however, this level of take meets the Category III definition. Very few, if any, of the vessels that catch herring with bottom trawl gear are actually targeting herring. The herring fishery is considered predominantly a mid-water trawl fishery, which is listed separately.

#### *Comments on the Northeast Sink Gillnet Fishery*

*Comment 29:* One commenter requests that the number of participants in the Northeast sink gillnet fishery be changed from 341 to 200 and that "North Atlantic right whale, WNA" be removed from the list of species interacting with the fishery.

*Response:* The most current analysis of the number of boats in the Northeast sink gillnet fishery was done in the Regulatory Flexibility Act analysis for the Harbor Porpoise Take Reduction Plan. This analysis determined that at least 273 vessels used sink gillnet gear in 1996. Vessels included in that analysis either reported the use of gillnet gear in a fishing vessel log or sold fish to a dealer reporting through the dealer logbook system. There may be a number of vessels fishing in state waters which were not identified by the Federal logbook system. Since the fishery listing under the MMPA includes all state water participants, the number of actual participants in 1996 may be somewhat higher than 273. Therefore, we are not changing the number of participants at this time. We acknowledge that participation is not equal amongst vessels reporting use of gillnet gear; however, the LOF does not attempt to distinguish between active and limited participation.

There are several records of right whale entanglements in gillnet gear. Right whale distribution overlaps areas where U.S. sink gillnet gear is set and observations of right whales entangled in gillnet gear have been recorded in U.S. waters. Therefore, some of the historical gillnet entanglement records may have involved sink gillnet gear, and the potential remains for right whales to become entangled and seriously injured

in gear used by the Northeast sink gillnet fishery.

*Comment 30:* One commenter supports NMFS' proposal to change the name of the "Northeast multispecies sink gillnet fishery" to the "Northeast sink gillnet fishery."

*Response:* We agree and are changing the name of the "Northeast multispecies sink gillnet fishery" to the "Northeast sink gillnet fishery."

#### *Comments on the Atlantic Squid, Mackerel, Butterfish Trawl Fishery*

*Comment 31:* One commenter questions NMFS' justification for refusing to categorize the Atlantic squid, mackerel, butterfish trawl fishery in Category I based on a vague assertion that uncertainty exists. The commenter expressed concern that data from 1997 had not been analyzed prior to issuing the proposed LOF. The commenter noted that it is difficult to understand how this uncertainty occurred after the spring SRG meeting and yet could not be resolved prior to issuing the LOF. NMFS should be guided by the precautionary principle and list this as a Category I fishery because of its marine mammal interactions.

*Response:* The data for 1997 have not yet been fully analyzed. We anticipate that these data will be fully analyzed for the draft 1999 SAR and will be available prior to preparation of the proposed 2000 LOF.

#### *Comments on the Gulf of Maine, U.S. Mid-Atlantic Mixed Species Trap/Pot Fishery*

*Comment 32:* One commenter notes that the Gulf of Maine/U.S. Mid-Atlantic mixed species trap/pot fishery is listed as a Category III fishery. They are also listed as interacting with North Atlantic right whales, and whales have been seen entangled with buoy lines that are of unknown origin, but that may have come from this fishery. Because of this, the commenter did not understand why this is a Category III fishery, since the PBR level for right whales is only 0.4 per year and any interaction would likely exceed 10 percent of the PBR level. This fishery should be listed as a Category I or II fishery.

*Response:* We agree that fixed gear fisheries with gear components capable of entangling whales may pose a risk in times/areas coinciding with whale distribution. However, no records of entanglement in gear known to be used in this fishery were documented during the period analyzed. We intend to analyze this fishery with respect to fishery distribution and other factors to determine if reclassification is

warranted for the proposed LOF for 2000.

#### *Comments on Takes From Human Activities Other Than Commercial Fishing*

*Comment 33:* One commenter requests that commercial passenger vessels and other vessels that hit whales and manatees be classified in the LOF.

*Response:* It is not appropriate to list vessel impacts in the MMPA LOF. The LOF is directed at incidental takes of marine mammals by commercial fisheries. We are addressing ship strike impacts to whales through activities recommended by the Northeast Recovery Plan Implementation Team for commercial shipping traffic and whale watch vessels.

#### *Comments on the Proposed Changes to Regulations at 50 CFR Part 229*

*Comment 34:* One commenter wrote in support of NMFS' proposal to revise 50 CFR part 229 by: removing the definition of "Incidental, but not intentional take," clarifying that the marine mammal deterrence provisions pertain to all commercial fishers, requiring that participants in non-vessel fisheries report their gear permit number, requiring that vessel operators provide specific accommodations to observers, and specifying that under an emergency action, the Assistant Administrator for Fisheries, NMFS (Assistant Administrator) will determine whether a recategorization of the fishery is appropriate.

*Response:* We agree and are finalizing these changes.

*Comment 35:* One commenter disagrees with NMFS' proposal to delete the requirement that vessel owners must provide, when they register, the "approximate time, duration, and location of each such fishery operation, and the general type and nature of use of the fishing gear and techniques used." The MMPA specifically mandates that vessel owners provide this information, and the commenter disagrees that this information is included in the fishery title. NMFS cannot manage fisheries if fishers do not provide this information.

*Response:* As part of their registration, fishers must provide the name of the Category I and II fisheries in which they participate. Fishers are not asked to submit additional fishery description information because we obtain this information from Federal, state, and local fishery management officials. We believe that it is more efficient to obtain this information from fishery management sources, rather than to burden individual fishers by requiring

them to provide this detailed information. In addition, we believe that there is an advantage in collecting compiled fishery information from fishery management sources because it allows us to track the behavior of the entire fishery instead of the behavior of individual fishers.

*Comment 36:* One commenter strongly opposes NMFS' proposal to remove all references to an "annual decal" and to use the term "decal" in its place. The commenter believes this is a clear violation of the MMPA which requires that a "decal or other physical evidence that the authorization is current and valid \* \* \* and so long as the authorization remains current and valid, shall be reissued annually thereafter." NMFS is violating the MMPA by not issuing an annual decal with an expiration date each year after it receives a vessel owners completed registration.

*Response:* Upon receiving a vessel owner's completed registration information, we issue an annual Authorization Certificate with an expiration date. This Authorization must be renewed annually. This Authorization Certificate satisfies the requirement of section 118 of the MMPA to have a "decal or other physical evidence that the authorization is current and valid \* \* \* and so long as the authorization remains current and valid, shall be reissued annually thereafter."

We have successfully integrated the Marine Mammal Authorization Program (MMAP) with existing fishery management programs for several fisheries and reduced the burden on fishers in these fisheries. Participants in these integrated fisheries are registered automatically in the MMAP. In order for participants in these fisheries to receive annual MMAP decals, we would need to conduct a separate annual mailing to these participants. We believe that sending these decals to all participants in integrated fisheries is an unnecessary burden and would work against the goal of the integrated registration system. In addition, we believe that the issuance of an annual MMAP decal is unnecessary given that the Authorization certificate provides annual proof that a marine mammal authorization has been granted.

For these reasons, we will continue to distribute MMAP decals that do not have an annual expiration. MMAP decals may not be distributed every year. We are replacing the term "annual decal" with the term "decal."

*Comment 37:* One commenter opposes NMFS' removing the definition of "Incidental mortality" because it is a

term used throughout the MMPA and its implementing regulations.

*Response:* We agree that the term "incidental mortality" is used throughout the MMPA; however, the term "incidental" is broadly used throughout the MMPA and is used in conjunction with several other terms (e.g., incidental serious injury). We believe that it is more appropriate to define the broad term "incidental" in 50 CFR part 229 than to specifically define "incidental mortality." We are adding the following definition to § 229.2: "Incidental means, with respect to an act, a non-intentional act or accidental act that results from, but is not the purpose of, carrying out an otherwise lawful action."

*Comment 38:* One commenter opposes NMFS' proposal to remove the provision that requires the Authorization Certificate be signed and dated by the owner or the authorized representative of the owner in order to be valid. NMFS claims that the possession of the certificate is sufficient to provide an authorization for taking marine mammals. The vessel owner's signature means that he/she has read and understands the legal requirements and is bound to abide and carry out these requirements.

*Response:* We disagree. The Authorization to take marine mammals is granted when we issue the Certificate and is not contingent upon the vessel owner's signature.

In the past, the signature line on the Authorization Certificate has resulted in some confusion. Fishers have assumed that since they were required to sign them, they should send them back to us. Removing the signature line, and the requirement to sign the Authorization Certificates, will help eliminate this confusion.

*Comment 39:* One commenter states that NMFS' proposal in § 229.7 to add "sleeping accommodations \* \* \* that are equivalent to those provided to the crew" needs to be clarified. It is common for a vessel to only have bunk space sufficient for the number of crew typically carried in any specific fishery. The commenter suggested using instead: "sleeping accommodations that are reasonably equivalent to those provided to the crew, taking the vessel's presently existing sleeping accommodations into account."

*Response:* We recognize that many vessels only have bunk space for the number of crew carried in any specific fishery. We will continue to take the vessel's existing sleeping accommodations into account with respect to observer accommodations. It is not the intent of this provision to

require vessel owners to build extra bunks to accommodate observers. We are clarifying that the requirement to provide "sleeping accommodations \* \* \* that are equivalent to the crew" depends upon the specific accommodations of a given vessel. We believe that the proposed text is adequate and will take a vessel's existing sleeping accommodations into account in enforcing this provision.

*Comment 40:* One commenter states that the need for the provision under § 229.30 stems from a lack of cooperation between the divisions of Protected Resources and Sustainable Fisheries, NMFS. The fact that Protected Resources needs the power to enact fisheries regulations independent of Sustainable Fisheries indicates a serious problem within NMFS that obviously interferes with its ability to fulfill its mission. The proposed provision does not fix the problem.

*Response:* Section 229.30 contains the implementing regulations for TRPs developed under the MMPA. The only change that we proposed to this section was to add an introductory paragraph for this section. This section introduces the TRP implementing regulations by outlining our authority under the MMPA in implementing TRPs.

#### *Additional Comments*

We received several comments on 50 CFR part 229 that addressed issues that were outside the scope of our currently proposed changes and technical revisions. We will address these comments during a future review of these regulations.

#### Summary of Changes to the LOF for 1999

With the following exceptions, the placement and definitions of U.S. commercial fisheries are identical to those provided in the LOF for 1998. Thus, the majority of the LOF for 1998 remains valid in 1999. The following summarizes the changes in fishery classification, fishery definition, number of participants in a particular fishery, the species that are designated as strategic stocks, and the species and/or stocks that are incidentally killed or seriously injured that are made final by this LOF for 1999:

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

##### *Fishery Description*

The "Alaska Peninsula/Aleutians salmon drift gillnet fishery" is renamed the "Alaska Peninsula/Aleutian Islands salmon drift gillnet fishery."

The "Alaska Peninsula/Aleutian Island salmon set gillnet fishery" is

renamed the "Alaska Peninsula/Aleutian Islands salmon set gillnet fishery."

The "Alaska Cook Inlet drift gillnet fishery" is renamed the "Alaska Cook Inlet salmon drift gillnet fishery."

The "Alaska Bristol Bay drift gillnet fishery" is renamed the "Alaska Bristol Bay salmon drift gillnet fishery."

The "Alaska Bristol Bay set gillnet fishery" is renamed the "Alaska Bristol Bay salmon set gillnet fishery."

The "Alaska pair trawl fishery" is renamed the "Alaska miscellaneous finfish pair trawl fishery."

The "Alaska Prince William Sound set gillnet fishery" is renamed the "Alaska Prince William Sound salmon set gillnet fishery."

The "Alaska Metlakatla purse seine fishery" is renamed the "Alaska Metlakatla salmon purse seine fishery."

The "Alaska other finfish handline and mechanical jig fishery" is renamed the "Alaska miscellaneous finfish handline and mechanical jig fishery."

#### *Number of Vessels/Persons*

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

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

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

The estimated number of persons/vessels for the Washington Puget Sound Region salmon drift gillnet fishery is changed from 900 to 725.

The estimated number of persons/vessels for the Washington, Oregon salmon net pens is changed from 21 to 14.

#### *List of Species That Are Incidentally Injured or Killed by a Particular Fishery*

The Washington Inland Waters stock of Harbor seals is added to the list of species/stocks that are incidentally killed or injured by the Washington, Oregon salmon net pens.

The southern sea otter is added to the list of species/stocks that are incidentally killed or injured by the California angel shark/halibut and other species large mesh set gillnet fishery.

The southern sea otter is added to the list of species/stocks that are incidentally killed or injured by the California lobster, prawn, shrimp, rock crab, fish pot fishery. Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

#### *Fishery Classification*

The "Gulf of Mexico menhaden purse seine fishery" is moved from Category III to Category II.

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

The "Atlantic herring midwater trawl (including pair trawl) fishery" is added to the LOF as a Category II fishery. This fishery includes those vessels currently participating in the "Gulf of Maine, U.S. mid-Atlantic coastal herring trawl fishery" (which is removed from the LOF).

#### *Removals of Fisheries From the LOF*

The "Gulf of Maine, U.S. mid-Atlantic coastal herring trawl fishery" is removed from the LOF.

#### *Fishery Descriptions*

The "Gulf of Maine, southeast U.S. Atlantic coastal shad, sturgeon, gillnet (includes waters of North Carolina) fishery" is renamed the "Gulf of Maine, southeast U.S. Atlantic coastal shad, sturgeon, gillnet fishery." Fishers participating in the North Carolina fishery are more appropriately identified under the U.S. mid-Atlantic coastal gillnet fishery.

#### *Number of Vessels/Persons*

The estimated number of vessels/persons for the Southeastern U.S. Atlantic, Gulf of Mexico, Caribbean spiny lobster trap/pot fishery is changed from 750 to 4,847.

#### *List of Species That Are Incidentally Injured or Killed by a Particular Fishery*

The stocks of marine mammals that are injured/killed in the Northeast sink gillnet fishery are clarified for the following species: Common dolphin, Western North Atlantic (WNA); Fin whale, WNA; Spotted dolphin, WNA; False killer whale, WNA; Harp seal, WNA.

The WNA coastal stock of bottlenose dolphin is added to the list of species/stocks that are incidentally injured or killed by the North Carolina inshore gillnet fishery.

The list of marine mammal species/stocks incidentally injured/killed in the Florida east coast, Gulf of Mexico pelagics king and Spanish mackerel gillnet fishery is changed to "None documented."

#### **Changes Resulting From Draft 1998 SARs**

The table in the LOF that lists all U.S. commercial fisheries, the number of participants in each fishery, and the marine mammal stocks and/or species incidentally killed or injured in each fishery is updated to include the

following changes in the draft Pacific and Atlantic SARs:

1. The CA/OR/WA stocks of Mesoplodont beaked whales are proposed to be designated as non-strategic;

2. The CA/OR/WA stock of minke whales are proposed to be designated as non-strategic; and

3. The Western North Atlantic stock of white-sided dolphin is proposed to be designated as strategic.

The draft SAR for Alaska provided updates to the number of participants in each Alaska commercial fishery and to the list of species and/or stocks incidentally injured or killed in each fishery. When possible, the number of participants provided in the table in the LOF reflects the number of permits fished in 1996. For those fisheries for which this information was not available, the number of permits issued was used to represent the number of participants.

#### **Summary of Changes to Regulations at 50 CFR Part 229**

We are making several revisions and technical edits to 50 CFR part 229. These changes are described here.

#### *Definitions*

In § 229.2 and § 229.3 we are removing the term "taking" and adding in its place the term "incidental serious injury and mortality."

In § 229.2, we are removing the definitions of the terms "Fisher", "Incidental, but not intentional, take" and "Incidental mortality" and adding definitions of the terms "Fisher or fisherman", "Incidental" and "Integrated fishery."

#### *Requirements for Category I and II Fisheries*

We are removing the requirement that vessel/gear owners provide a description of the gear type and approximate time, duration, and locations of each fishery operation.

In § 229.4(e)(1) and § 229.4(e)(3), we are removing the term "annual" before the term "decal."

We are removing the provision that all Authorization Certificates must be signed and dated by the owner or the authorized representative of the owner in order to be valid.

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

**Requirements for Category III Fisheries**

We are correcting the wording of this section to clarify that this deterrence provision applies to all vessel owners and crew members engaged in commercial fishing operations.

**Reporting Requirements**

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

**Monitoring of Incidental Mortalities and Serious Injuries**

We are removing all references to an "onboard observer" and we are further defining the specific accommodations that vessel operators must provide by specifying that vessel operators or crew members must provide "food, toilet, bathing, and sleeping accommodations that are equivalent to those provided to the crew." These accommodations should be provided at no cost to the observer or to us.

We are specifically allowing observers to sample, retain, or store target and non-target catch, which includes marine mammals or other protected species specimens.

We are clarifying that observer requirements apply to "vessel owners/operators" instead of "Authorization Certificate holders."

We are moving the prohibition of marine mammal retention from § 229.7(c)(6) to § 229.3 (e).

**Emergency Regulations**

We are revising the regulatory language regarding emergency actions to clarify that the Assistant Administrator in reviewing the fishery classification, would also determine whether a recategorization of the fishery is appropriate.

**Take Reduction Plans**

We are adding a new introductory section under subpart C addressing TRP regulations.

**List of Fisheries**

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. When possible, we express the estimated number of vessels in terms of the number of active participants in the fishery. If this

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

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

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

Fishery description	Estimated Number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
<b>Category I</b>		
Gillnet Fisheries: CA angel shark/halibut and other species large mesh (>3.5in) set gillnet.	58	Harbor porpoise, central CA. Common dolphin, short-beaked, CA/OR/WA. Common dolphin, long-beaked CA. California sea lion, U.S. Harbor seal, CA. Northern elephant seal, CA breeding. Sea otter, CA.
CA/OR thresher shark/swordfish drift gillnet .....	130	Steller sea lion, Eastern U.S.*+. Sperm whale, CA/OR/WA*+. Dall's porpoise, CA/OR/WA. Pacific white sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA. Bottlenose dolphin, CA/OR/WA offshore. Short-beaked common dolphin CA/OR/WA. Long-beaked common dolphin CA/OR/WA. Northern right whale dolphin, CA/OR/WA. Short-finned pilot whale, CA/OR/WA*. Baird's beaked whale, CA/OR/WA. Mesoplodont beaked whale, CA/OR/WA. Cuvier's beaked whale, CA/OR/WA. Pygmy sperm whale, CA/OR/WA. California sea lion, U.S. Northern elephant seal, CA breeding. Humpback whale, CA/OR/WA-Mexico*. Minke whale, CA/OR/WA. Striped dolphin, CA/OR/WA. Killer whale, CA/OR/WA Pacific coast.

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

Fishery description	Estimated Number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
<b>Category II</b>		
		Northern fur seal, San Miguel Island.
<b>Gillnet Fisheries:</b>		
AK Prince William Sound salmon drift gillnet .....	509	Steller sea lion, Western U.S.*+. Northern fur seal, Eastern Pacific*. Harbor seal, GOA*. Pacific white-sided dolphin, central North Pacific. Harbor porpoise, GOA. Dall's porpoise, AK.
AK Peninsula/Aleutian Islands salmon drift gillnet .....	163	Northern fur seal, Eastern Pacific*. Harbor seal, GOA. Harbor porpoise, Bering Sea. Dall's porpoise, AK.
AK Peninsula/Aleutian Islands salmon set gillnet .....	110	Steller sea lion, Western U.S.*+. Harbor porpoise, Bering Sea.
Southeast Alaska salmon drift gillnet .....	439	Steller sea lion, Eastern U.S.*+. Harbor seal, Southeast AK. Pacific white-sided dolphin, central North Pacific. Harbor porpoise, Southeast AK. Dall's porpoise, AK.
AK Cook Inlet salmon drift gillnet .....	560	Humpback whale, central North Pacific*+. Steller sea lion, Western U.S.*+. Harbor seal, GOA*. Harbor porpoise, GOA. Dall's porpoise, AK.
AK Cook Inlet salmon set gillnet .....	604	Beluga, Cook Inlet*. Steller sea lion, Western U.S.*+. Harbor seal, GOA*. Harbor porpoise, GOA. Beluga, Cook Inlet*. Dall's porpoise, AK.
AK Yakutat salmon set gillnet .....	139	Harbor seal, Southeast AK. Gray whale, Eastern North Pacific.
AK Kodiak salmon set gillnet .....	172	Harbor seal, GOA*. Harbor porpoise, GOA. Sea otter, Southwest AK.
AK Bristol Bay salmon drift gillnet .....	1,884	Steller sea lion, Western U.S.*+. Northern fur seal, Eastern Pacific*. Harbor seal, Bering Sea. Beluga, Bristol Bay. Gray whale, Eastern North Pacific. Spotted seal, AK. Pacific white-sided dolphin, central North Pacific.
AK Bristol Bay salmon set gillnet .....	941	Harbor seal, Bering Sea. Beluga, Bristol Bay. Gray whale, Eastern North Pacific. Northern fur seal, Eastern Pacific*. Spotted seal, AK.
AK Metlakatla/ Annette Island salmon drift gillnet .....	60	None documented.
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line—Treaty Indian fishing is excluded).	725	Harbor porpoise, inland WA. Dall's porpoise, CA/OR/WA. Harbor seal, WA inland.
<b>Purse Seine Fisheries:</b>		
CA anchovy, mackerel, tuna purse seine .....	150	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Harbor seal, CA.
CA squid purse seine .....	65	Short-finned pilot whale, CA/OR/WA*.
AK Southeast salmon purse seine .....	357	Humpback whale, central North Pacific*+.
<b>Trawl Fisheries:</b>		
AK miscellaneous finfish pair trawl .....	4	None documented.
<b>Longline Fisheries:</b>		
OR swordfish floating longline .....	2	None documented.
OR blue shark floating longline .....	1	None documented.

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

Fishery description	Estimated Number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
<b>Category III</b>		
<i>Gillnet Fisheries:</i>		
AK Prince William Sound salmon set gillnet .....	26	Steller sea lion, Western U.S.*+. Harbor seal, GOA*.
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1,491	None documented.
AK roe herring and food/bait herring gillnet .....	1,687	None documented.
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented.
WA Willapa Bay drift gillnet .....	82	Harbor seal, OR/WA coast. Northern elephant seal, CA breeding.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast.
WA, OR lower Columbia River (includes tributaries) drift gillnet.	110	California sea lion, U.S. Harbor seal, OR/WA coast.
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.	341	None documented.
AK miscellaneous finfish set gillnet .....	4	Steller sea lion, Western U.S.*+.
Hawaii gillnet .....	115	Bottlenose dolphin, HI. Spinner dolphin, HI.
<i>Purse Seine, Beach Seine, Round Haul and Throw Net Fisheries:</i>		
AK salmon purse seine (except Southeast Alaska, which is in Category II).	586	Harbor seal, GOA*.
AK salmon beach seine .....	6	None documented.
AK roe herring and food/bait herring purse seine .....	517	None documented.
AK roe herring and food/bait herring beach seine .....	1	None documented.
AK Metlakatla salmon purse seine .....	10	None documented.
AK octopus/squid purse seine .....	2	None documented.
CA herring purse seine .....	100	Bottlenose dolphin, CA coastal. California sea lion, U.S. Harbor seal, CA.
CA sardine purse seine .....	120	None documented.
AK miscellaneous finfish purse seine .....	4	None documented.
AK miscellaneous finfish beach seine .....	1	None documented.
WA salmon purse seine .....	440	None documented.
WA salmon reef net .....	53	None documented.
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 .....	14	California sea lion, U.S. Harbor seal, WA inland waters.
CA salmon enhancement rearing pen .....	>1	None documented.
OR salmon ranch .....	1	None documented.
<i>Troll Fisheries:</i>		
AK salmon troll .....	1149	Steller sea lion, Eastern U.S.*+.
CA/OR/WA salmon troll .....	4,300	None documented.
AK north Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,354	None documented.
HI trolling, rod and reel .....	1,795	None documented.
Guam tuna troll .....	50	None documented.
Commonwealth of the Northern Mariana Islands tuna troll ...	50	None documented.
American Samoa tuna troll .....	<50	None documented.
HI net unclassified .....	106	None documented.
<i>Longline/Set Line Fisheries:</i>		
AK state waters sablefish long line/set line .....	840	None documented.
Miscellaneous finfish/groundfish longline/set line .....	594	Harbor seal, GOA*. Harbor seal, Bering Sea. Dall's porpoise, AK. Steller sea lion, Western U.S. Harbor seal, Southeast AK.

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

Fishery description	Estimated Number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.	140	Northern elephant seal, CA breeding. Hawaiian monk seal*+. Humpback whale, Central North Pacific*+. Risso's dolphin, HI. Bottlenose dolphin, HI. Spinner dolphin, HI. Short-finned pilot whale, HI.
WA, OR North Pacific halibut longline/set line .....	350	None documented.
AK southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska sablefish longline/set line (federally regulated waters).	762	Northern elephant seal, CA breeding. Killer whale, resident. Killer whale, transient. Steller sea lion, Western U.S. Pacific white-sided dolphin, central. North Pacific. Dall's porpoise, AK. Steller sea lion, Western U.S.*+.
AK halibut longline/set line (state and Federal waters) .....	2,882	None documented.
WA, OR, CA groundfish, bottomfish longline/set line .....	367	None documented.
AK octopus/squid longline .....	2	None documented.
CA shark/bonito longline/set line .....	10	None documented.
Trawl Fisheries:		
WA, OR, CA shrimp trawl .....	300	None documented.
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet).	62	None documented.
AK Gulf of Alaska groundfish trawl .....	201	Steller sea lion, Western U.S.*+. Northern fur seal, Eastern Pacific*. Harbor seal, GOA*. Dall's porpoise, AK.
AK Bering Sea and Aleutian Islands groundfish trawl .....	193	Northern elephant seal, CA breeding. Steller sea lion, Western U.S.*+. Northern fur seal, Eastern Pacific*. Killer whale, resident. Killer whale, transient. Pacific white-sided dolphin, central. North Pacific. Harbor porpoise, Bering Sea. Harbor seal, Bering Sea. Harbor seal, GOA*. Bearded seal, AK. Ringed seal, AK. Spotted seal, AK. Dall's porpoise, AK. Ribbon seal, AK. Northern elephant seal, CA breeding. Sea otter, Southwest AK. Pacific Walrus, AK.
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl.	5	None documented.
AK miscellaneous finfish otter or beam trawl .....	312	None documented.
AK food/bait herring trawl .....	4	None documented.
WA, OR, CA groundfish trawl .....	585	Steller sea lion, Western U.S.*+. Northern fur seal, Eastern Pacific*. Pacific white-sided dolphin, central. North Pacific. Dall's porpoise, CA/OR/WA. California sea lion, U.S. Harbor seal, OR/WA coast.
Pot, Ring Net, and Trap Fisheries:		
AK crustacean pot .....	1,496	Harbor porpoise, Southeast AK.
AK Bering Sea, GOA finfish pot .....	274	Harbor seal, GOA*. Harbor seal, Bering Sea. Sea otter, Southwest AK.
WA, OR, CA sablefish pot .....	176	None documented.
WA, OR, CA crab pot .....	1,478	None documented.
WA, OR shrimp pot & trap .....	254	None documented.
CA lobster, prawn, shrimp, rock crab, fish pot .....	608	Sea otter, CA.
OR, CA hagfish pot or trap .....	25	None documented.
HI lobster trap .....	15	Hawaiian monk seal*+.
HI crab trap .....	22	None documented.
HI fish trap .....	19	None documented.

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

Fishery description	Estimated Number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
HI shrimp trap .....	5	None documented.
Handline and JIG Fisheries:		
AK North Pacific halibut handline and mechanical jig .....	266	None documented.
AK miscellaneous finfish handline and mechanical jig .....	258	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 tuna .....	144	Rough-toothed dolphin, HI. Bottlenose dolphin, HI. Hawaiian monk seal*+.
Guam bottomfish .....	<50	None documented.
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented.
American Samoa bottomfish .....	<50	None documented.
Harpoon Fisheries:		
CA swordfish harpoon .....	228	None documented.
Pound Net/Weir Fisheries:		
AK Southeast Alaska herring food/bait pound net .....	154	None documented.
WA herring brush weir .....	1	None documented.
Bait Pens:		
WA/OR/CA bait pens .....	13	None documented.
Dredge Fisheries:		
Coastwide scallop dredge .....	106	None documented.
Dive, Hand/Mechanical Collection Fisheries:		
AK abalone .....	9	None documented.
AK dungeness crab .....	3	None documented.
AK herring spawn-on-kelp .....	200	None documented.
AK urchin and other fish/shellfish .....	442	None documented.
AK clam hand shovel .....	62	None documented.
AK clam mechanical/hydraulic .....	19	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.
Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:		
AK, WA, OR, CA commercial passenger fishing vessel .....	>4,000	None documented.
AK octopus/squid "other" .....	19	None documented.
HI "other" .....	114	None documented.
Live Finfish/Shellfish Fisheries:		
CA finfish and shellfish live trap/hook-and-line .....	93	None documented.

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

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

List of Abbreviations Used in Table 1: AK—Alaska; CA—California; HI—Hawaii; GOA—Gulf of Alaska; OR—Oregon; WA—Washington.

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

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally injured/killed
<b>Category I</b>		
Gillnet Fisheries:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics drift gillnet.	15	North Atlantic right whale, WNA*+. Humpback whale, WNA*+. Sperm whale, WNA*+. Dwarf sperm whale, WNA*. Cuvier's beaked whale, WNA*.



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

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Northeast sink gillnet .....	341	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*. North Atlantic right whale, WNA*+. Humpback whale, WNA*+. Minke whale, Canadian east coast. Killer whale, WNA. White-sided dolphin, WNA*. Bottlenose dolphin, WNA offshore. Harbor porpoise, GME/BF*. Harbor seal, WNA. Gray seal, WNA. Common dolphin, WNA *. Fin whale, WNA *+. Spotted dolphin, WNA. False killer whale, WNA. Harp seal, WNA.
Longline Fisheries: Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.	361	Humpback whale, WNA*+. Minke whale, Canadian east coast. Risso's dolphin, WNA. Long-finned pilot whale, WNA*. Short-finned pilot whale, WNA*. Common dolphin, WNA*. Atlantic spotted dolphin, WNA*. Pantropical spotted dolphin, WNA*. Striped dolphin, WNA. Bottlenose dolphin, WNA offshore. Bottlenose dolphin, GMX Outer Continental Shelf. Bottlenose dolphin, GMX Continental Shelf Edge and Slope. Atlantic spotted dolphin, Northern GMX. Pantropical spotted dolphin, Northern GMX. Risso's dolphin, Northern GMX. Harbor porpoise, GME/BF*.
Trap/Pot Fisheries—Lobster: Gulf of Maine, U.S. mid-Atlantic lobster trap/pot .....	13,000	North Atlantic right whale, WNA*+. Humpback whale, WNA*+. Fin whale, WNA*+. Minke whale, Canadian east coast. White-sided dolphin, WNA*. Harbor seal, WNA.
<b>Category II</b>		
Gillnet Fisheries: U.S. mid-Atlantic coastal gillnet .....	>655	Humpback whale, WNA*+. Minke whale, Canadian east coast. Bottlenose dolphin, WNA offshore. Bottlenose dolphin, WNA coastal*+. Harbor porpoise, GME/BF*.
Gulf of Maine small pelagics surface gillnet .....	133	Humpback whale, WNA*+. White-sided dolphin, WNA*. Harbor seal, WNA.
Southeastern U.S. Atlantic shark gillnet .....	12	Bottlenose dolphin, WNA coastal*. North Atlantic right whale, WNA*+.

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

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally injured/killed
<b>Trawl Fisheries:</b>		
Atlantic squid, mackerel, butterfish trawl .....	620	Common dolphin, WNA*. Risso's dolphin, WNA. Long-finned pilot whale, WNA*. Short-finned pilot whale, WNA*. White-sided dolphin, WNA*.
Atlantic herring midwater trawl (including pair trawl) .....	17	None documented.
<b>Purse Seine Fisheries:</b>		
Gulf of Mexico menhaden purse seine .....	50	Bottlenose dolphin, Western GMX coastal. Bottlenose dolphin, Northern GMX coastal.
<b>Haul Seine Fisheries:</b>		
Mid-Atlantic haul seine .....	25	Bottlenose dolphin, WNA coastal*. Harbor porpoise, GME/BF*.
<b>Stop Net Fisheries:</b>		
North Carolina roe mullet stop net .....	13	Bottlenose dolphin, WNA coastal*.
<b>Category III</b>		
<b>Gillnet Fisheries:</b>		
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	Bottlenose dolphin, WNA coastal*+.
Gulf of Mexico inshore gillnet (black drum, sheepshead, weakfish, mullet, spot, croaker).	unknown	None documented.
Gulf of Maine, Southeast U.S. Atlantic coastal shad, sturgeon gillnet.	1,285	Minke whale, Canadian east coast. Harbor porpoise, GME/BF*. Bottlenose dolphin, WNA coastal*+.
Gulf of Mexico coastal gillnet (includes mullet gillnet fishery in LA and MS).	unknown	Bottlenose dolphin, Western GMX coastal. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Eastern GMX coastal.
Florida east coast, Gulf of Mexico pelagics king and Spanish mackerel gillnet.	271	Bottlenose dolphin, GMX Bay, Sound, & Estuarine*. Bottlenose dolphin, Western GMX coastal. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX Bay, Sound, & Estuarine*.
<b>Trawl Fisheries:</b>		
North Atlantic bottom trawl .....	1,052	Long-finned pilot whale, WNA*. Short-finned pilot whale, WNA*. Common dolphin, WNA*. White-sided dolphin, WNA*. Striped dolphin, WNA. Bottlenose dolphin, WNA offshore.
Mid-Atlantic, Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl.	>18,000	Bottlenose dolphin, WNA coastal*+.
Gulf of Maine northern shrimp trawl .....	320	None documented.
Gulf of Maine, Mid-Atlantic sea scallop trawl .....	215	None documented.
Mid-Atlantic mixed species trawl .....	>1,000	None documented.
Gulf of Mexico butterfish trawl .....	2	Atlantic spotted dolphin, Eastern GMX Pantropical spotted dolphin, Eastern GMX.
Georgia, South Carolina, Maryland whelk trawl .....	25	None documented.
Calico scallops trawl .....	200	None documented.
Bluefish, croaker, flounder trawl .....	550	None documented.
Crab trawl .....	400	None documented.
U.S. Atlantic monkfish trawl .....	unknown	Common dolphin, WNA*.
<b>Marine Aquaculture Fisheries:</b>		
Finfish aquaculture .....	48	Harbor seal, WNA.
Shellfish aquaculture .....	unknown	None documented.

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

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally injured/killed
<b>Purse Seine Fisheries:</b>		
Gulf of Maine Atlantic herring purse seine .....	30	Harbor porpoise, GME/BF*. Harbor seal, WNA. Gray seal, Northwest North Atlantic.
Mid-Atlantic menhaden purse seine .....	22	Bottlenose dolphin, WNA coastal*+.
Gulf of Maine menhaden purse seine .....	50	None documented.
Florida west coast sardine purse seine .....	10	Bottlenose dolphin, Eastern GMX coastal.
U.S. Atlantic tuna purse seine .....	unknown	None documented.
U.S. mid-Atlantic hand seine .....	>250	None documented.
<b>Longline/Hook-and-Line Fisheries:</b>		
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.
<b>Trap/Pot Fisheries—Lobster, Crab, and Fish:</b>		
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.
Atlantic Ocean, Gulf of Mexico blue crab trap/pot .....	20,500	Bottlenose dolphin, WNA coastal*. Bottlenose dolphin, Western GMX coastal. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX Bay, Sound, & Estuarine*. West Indian manatee, FL*+.
Southeastern U.S. Atlantic, Gulf of Mexico, Caribbean spiny lobster trap/pot.	4,847	West Indian manatee, FL*+. Bottlenose dolphin, WNA coastal*+.
<b>Stop Seine/Weir/Pound Fisheries:</b>		
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.
<b>Dredge Fisheries:</b>		
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.
<b>Haul Seine Fisheries:</b>		
Southeastern U.S. Atlantic, Caribbean haul seine .....	25	None documented.
<b>Beach Seine Fisheries:</b>		
Caribbean beach seine .....	15	West Indian manatee, FL+.
<b>Dive, Hand/Mechanical Collection Fisheries:</b>		
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.
<b>Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:</b>		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	None documented.

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

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

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**

When this LOF for 1999 was proposed, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

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

This final rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

This rule does not contain new collection-of-information requirements subject to the Paperwork Reduction Act; however, the addition of two fisheries to Category II in the LOF will result in up to 70 new fishers being subject to collection-of-information requirements. Some of these fishers may currently participate in other Category II fisheries and, therefore, may already be required to register under the MMPA.

Notwithstanding any other provision of law, you are not to respond to nor shall you 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.

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

**References**

Barlow *et al.* "U.S. Marine Mammal Stock Assessments: Guidelines for Preparation, Background, and a Summary of the 1995 Assessments". NOAA Tech. Memo. NMFS-OPR-6, 1995.

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

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

Dated: February 17, 1999.

**Rolland A. Schmitt**,  
*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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

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

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

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

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

**§ 229.1 Purpose and scope.**

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

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

**§ 229.2 Definitions.**

*Category III fishery.* \* \* \*  
(2) \* \* \* In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is "remote"

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

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

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

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

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

**§ 229.3 Prohibitions.**

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

\* \* \* \* \*  
5. Section 229.4, is amended as follows:

a. Paragraph (b)(2)(v) is removed; paragraphs (b)(2)(vi) and (c) are redesignated as paragraphs (b)(2)(v) and (b)(2)(vi), respectively; in newly redesignated paragraph (b)(2)(vi), the heading "Fee." is removed; paragraphs (d) through (m) are redesignated as paragraphs (c) through (l); and in newly redesignated paragraph (g), the word "onboard" is removed.

b. Newly redesignated paragraphs (c) introductory text, (c)(3) through (c)(5), (d)(1), (d)(2), and the first sentence of newly redesignated paragraph (e)(1) are revised; the last sentence of newly redesignated paragraph (d)(3) is removed; newly redesignated paragraph (e)(3) is amended by removing the term "annual" and newly redesignated

paragraph (l) is amended by removing the phrase "and annual decals".

The revisions read as follows:

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 229.5 Requirements for Category III fisheries.**

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 229.6 Reporting requirements.**

\* \* \* \* \*

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

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

**§ 229.7 Monitoring of incidental mortalities and serious injuries.**

\* \* \* \* \*

(b) *Observer program.* Pursuant to paragraph (a) of this section, the Assistant Administrator may observe Category I and II vessels as necessary. Observers may, among other tasks:

\* \* \* \* \*

(c) *Observer requirements for participants in Category I and II fisheries.* (1) If requested by NMFS or by a designated contractor providing observer services to NMFS, a vessel owner/operator must take aboard an observer to accompany the vessel on fishing trips.

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

\* \* \*

\* \* \* \* \*

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

**§ 229.8 Publication of List of Fisheries.**

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

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

**§ 229.9 Emergency regulations.**

(a) \* \* \*

(3) \* \* \*

(ii) Immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine

if a take reduction team should be established and if recategorization of the fishery is warranted; and

\* \* \* \* \*

11. In § 229.10, paragraph (g)(1) is amended by removing the word "serious" before "injury" and paragraph (d) is revised to read as follows:

**§ 229.10 Penalties.**

\* \* \* \* \*

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

\* \* \* \* \*

**§ 229.11 [Amended]**

12. In § 229.11, paragraph (b) is amended by removing the parenthetical clause "(see ADDRESSES)".

**§ 229.20 [Amended]**

13. In § 229.20, paragraph (f) is amended by removing the reference to "§ 229.21(b)" and adding in its place a reference to "paragraph (b) of this section".

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

**§ 229.30 Basis.**

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

[FR Doc. 99-4442 Filed 2-23-99; 8:45 am]  
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 981014259-8312-02; I.D. 012299B]

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 1999 Summer Flounder Commercial Quota; Commercial Quota Harvested for Delaware; Correction**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Commercial quota adjustment, notice of commercial quota harvest; correction.

**SUMMARY:** This document contains corrections to the adjustment to the 1999 commercial Summer Flounder Quotas that was published on February 3, 1999, and adds text that was inadvertently omitted.

**DATES:** Effective January 28, 1999, through December 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fisheries Policy Analyst, (978) 281-9273.

**SUPPLEMENTARY INFORMATION:**

**Background**

NMFS published a document in the **Federal Register** of February 3, 1999 (64 FR 5196), announcing preliminary adjustments to the 1999 summer flounder commercial quotas. The notification also corrected errors for Rhode Island's commercial summer flounder allocation specified in Table 1.—1999 State Commercial Quotas to the preamble of the document published on December 31, 1998 (63 FR 72203). Portions of the text describing revisions made to Table 1 of the December 31 publication were inaccurate and some text was also omitted. However, Tables 2 and 3 of the February 3, 1999, publication accurately reflect these corrections. Therefore, this document corrects only this text portion of the preamble to the February 3, 1999, correction document related to the Rhode Island commercial summer flounder allocation.

**Corrections**

In FR Doc. 99-2465, published in the **Federal Register** of February 3, 1999, on page 5196, in column 3, the first 5 complete paragraphs are correctly added and the text that was inadvertently omitted is added to read as follows:

This notification also corrects errors for Rhode Island's commercial summer flounder allocation specified in the preamble to Table 1.—1999 State Commercial Quotas published on December 31, 1998 (63 FR 72203).

In FR Doc. 98-34511, on page 72204, in Table 1.—1999 State Commercial Quotas, the commercial state allocation for Rhode Island is corrected to read as follows:

In the third column of the table, under the heading "Directed", and under the subheading "Lb", in the fourth line, "1,171,379" is corrected to read "1,172,758"; in the last line, the total

"7,468,107" is corrected to read "7,477,232" and in the fourth column of the table, under the same heading, and under the subheading "KG", in the fourth line, "53,133" is corrected to read "531,954"; in the last line, the total "3,387,476" is corrected to read "3,391,615".

In the fifth column of the table, under the heading "Incidental catch", under the subheading "Lb", in the fourth line, "571,204" is corrected to read "569,825"; in the last line the total "3,642,191" is corrected to read "3,633,068" and in the sixth column, under the same heading, under the subheading "KG", in the fourth line, "259,094" is corrected to read "258,468" and in the last line, the total "1,652,070" is corrected to read "1,647,932".

In the seventh column, under the heading "Total", under the subheading "Lb", in the fourth line, "1,741,583" is corrected to read "1,742,583"; and under the same heading, under the same subheading, in the last line, the total "11,111,191" is corrected to read "11,110,300"; and in the eighth column, under the same heading and under the subheading "KG", in the fourth line, "789,968" is corrected to read "790,422" and in the last line the total "5,039,951" is corrected to read "5,039,547". These corrections are reflected in Tables 2 and 3 of this document. In addition, Tables 2 and 3 reflect a quota transfer of 5,000 lb (2,268 kg) from North Carolina to Virginia (64 FR 2600, January 15, 1999).

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

**Authority 16 U.S.C. 1801 et seq.**

Dated: February 18, 1999.

**Rolland A. Schmitt,**

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

[FR Doc. 99-4597 Filed 2-23-99; 8:45 am]

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