

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Wofford Heights, California, Channel 251A.

Federal Communications Commission.

**John A. Karousos,**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 061106290-7059-02, I.D. 101706C]

RIN 0648-AV01

#### List of Fisheries for 2007

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

**ACTION:** Final rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) is publishing its final List of Fisheries (LOF) for 2007, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2007 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

**DATES:** This final rule is effective April 27, 2007.

The Alaska Cook Inlet set gillnet fishery, Alaska Cook Inlet salmon purse seine fishery, Alaska Kodiak salmon purse seine fishery, California tuna purse seine fishery, Mid-Atlantic mid-

water trawl (including pair trawl) fishery, and Mid-Atlantic flynet fishery are considered to be Category II fisheries on April 27, 2007, and are required to comply with all requirements of Category II fisheries (i.e., complying with applicable registration requirements, complying with applicable take reduction plan requirements, and carrying observers, if requested) on that date.

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

Written comments regarding the burden-hour estimates or other aspects of the information collection requirements contained in this final rule may be submitted to NMFS, Attn: Patricia Lawson, fax: 301-427-2522 or *Patricia.Lawson@noaa.gov*, or the Office of Management and Budget, Attn: David Rostker, fax: 202-395-7285 or *David\_Rostker@omb.eop.gov*.

#### FOR FURTHER INFORMATION CONTACT:

Melissa Andersen, Office of Protected Resources, 301-713-2322; David Gouveia, Northeast Region, 978-281-9328; Nancy Young, Southeast Region, 727-551-5607; Elizabeth Petras, Southwest Region, 562-980-3238; Brent Norberg, Northwest Region, 206-526-6733; Bridget Mansfield, Alaska Region, 907-586-7642; Lisa Van Atta, Pacific Islands Region, 808-944-2257.

Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

#### SUPPLEMENTARY INFORMATION:

#### Availability of Published Materials

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

#### Regional Offices

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298, Attn: Marcia Hobbs;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Teletha Mincey;

NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, Attn: Lyle Enriquez;

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

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

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

#### What is the List of Fisheries?

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

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

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

#### Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

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

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

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

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

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

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

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

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

In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality qualifies for Category II by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

#### **How Does NMFS Determine which Species or Stocks are Included as Incidentally Killed or Seriously Injured in a Fishery?**

The LOF includes a list of marine mammal species or stocks incidentally killed or seriously injured in each commercial fishery, based on the level of mortality or serious injury in each fishery relative to the PBR level for each stock. To determine which species or stocks are included as incidentally killed or seriously injured in a fishery, NMFS annually reviews the information presented in the current Marine Mammal Stock Assessment Reports (SARs). The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of mortality or serious injury incidental to commercial fishing operations. NMFS also reviews other sources of new information, including observer data, stranding data and fisher self-reports.

In the absence of reliable information on the level of mortality or serious injury of a marine mammal stock, or insufficient observer data, NMFS will determine whether a species or stock should be added to, or deleted from, the list by considering other factors such as: changes in gear types used, increases or decreases in fishing effort, increases or decreases in the level of observer coverage, and/or changes in fishery management that are expected to lead to decreases in interactions with a given marine mammal stock (such as a Fishery Management Plan or a Take Reduction Plan). NMFS will provide case specific justification in the LOF for changes to the list of species or stocks incidentally killed or seriously injured.

#### **How do I Determine the Level of Observer Coverage in a Fishery?**

Data obtained from observers and the level of observer coverage are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. The best available information on the level of observer coverage, and the spatial and temporal distribution of observed marine mammal interactions, is presented in the SARs. Starting in 2005, each SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine

mammals. Information presented in the SARs' appendices include: level of observer coverage, target species, levels of fishing effort, spatial and temporal distribution of fishing effort, gear characteristics, management and regulations, and marine mammal interactions.

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

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

This final rule includes two tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska). Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

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

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

#### **How Do I Register?**

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

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

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal

fishery license, registration, or permit systems. Participants in these fisheries are automatically registered under the MMPA and are not required to submit registration or renewal materials or pay the \$25 registration fee. The following section indicates which fisheries are integrated fisheries and has a summary of the integration process for each Region. Vessel or gear owners who operate in an integrated fishery and have not received an authorization certificate by January 1 of each new year or with renewed state fishing licenses (as in Washington and Oregon) must contact their NMFS Regional Office (see **ADDRESSES**). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries. Individuals fishing in Category I and II fisheries for which no state or Federal permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

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

The following fisheries have integrated registration programs under the MMPA:

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

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

Vessel or gear owners that participate in fisheries that have integrated registration programs (described above) are automatically renewed and should receive an authorization certificate by January 1 of each new year, with the exception of Washington and Oregon Category II fisheries. Washington and Oregon fishers receive authorization with each renewed state fishing license, the timing of which varies based on target species. Vessel or gear owners

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

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

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. Injury/mortality report forms and instructions for submitting forms to NMFS can be downloaded from: [http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap\\_reporting\\_form.pdf](http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf). Reporting requirements and procedures can be found in 50 CFR 229.6.

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

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

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

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans.

Take reduction plan requirements can be found at 50 CFR 229.30–34.

#### **Sources of Information Reviewed for the Final 2007 LOF**

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

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

The LOF for 2007 was based, among other things, on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), the final SARs for 2002 (68 FR 17920, April 14, 2003), the final SARs for 2003 (69 FR 54262, September 8, 2004), the final SARs for 2004 (70 FR 35397, June 20, 2005), the final SARs for 2005 (71 FR 26340, May 4, 2006), and the draft SARs for 2006 (71 FR 42815, July 28, 2006). All SARs are available at: <http://www.nmfs.noaa.gov/pr/sars/>.

#### **Comments and Responses**

NMFS received 9 comment letters on the proposed 2007 LOF (71 FR 70339, December 4, 2006) from environmental, commercial fishing, and Federal and state interests. Comments on issues outside the scope of the LOF were noted, but are not responded to in this final rule.

#### **General Comments**

**Comment 1:** One commenter recommended NMFS continue to support current research efforts, and support and engage in additional research, on depredation and associated fishery interactions. Research should focus on developing means of reducing or controlling depredation rates and

minimizing or mitigating any serious injuries or deaths of marine mammals from depredation-related interactions.

**Response:** NMFS has supported and will continue to support research efforts intended to better understand the nature of depredation-related interactions, to reduce the risk of serious injury and mortality to marine mammal stocks, and to investigate potential mitigation strategies.

Through the Take Reduction Team (TRT) process, NMFS has developed and implemented successful gear research components to several Take Reduction Plans (TRP). Specifically, NMFS has allocated research funding for several TRPs including the Atlantic Trawl Gear, Atlantic Large Whale, Pelagic Longline, and Bottlenose Dolphin TRPs. The research identified by the respective TRTs allows NMFS to better understand the behavior of several marine mammal species. The recommended research included techniques such as the use of video cameras to document marine mammal interactions with various gear types in hopes of gaining a better understanding of whether these interactions are a result of depredation of the target species by the marine mammals, or other behavioral factors. This knowledge will provide insights into what types of mitigation measures can be implemented in order to minimize the serious injuries and mortalities associated with depredation-related interactions. Various gear modifications are routinely researched to reduce the risk of interactions and serious injury and mortality of marine mammals should an entanglement occur.

NMFS also gathers information on marine mammal depredation in fisheries from various sources including, fishery observer records, vessel logbooks, data collected during dockside surveys, independent researchers, State agencies, and the general public. NMFS uses this information to monitor fisheries and evaluate whether action is needed to prevent or limit depredation in order to protect marine mammals. For example, in the past NMFS has participated in a program to conduct research in California, Oregon, and Washington examining pinniped depredation in various fisheries and develop methods to reduce or control the depredation. However, funding for this program was eliminated in 2005 and it is not known if funding will be re-instated in the future. Also, NMFS is currently reviewing the issues related to depredation by false killer whales in the Hawaii-based longline fishery and is supportive of research efforts to reduce

false killer whale take. NMFS continues to seek ways to support and participate in research on depredation and the development of deterrent methods, within existing budget constraints.

**Comment 2:** One commenter recommended NMFS work with regional Fishery Management Councils to improve monitoring and mitigation of serious injury and mortality rates incidental to trap/pot fisheries. Interactions with trap/pot gear are known to occur. However, the frequency is difficult to quantify because traditional fishery observer programs are unlikely to observe entangled animals, particularly large whales that often carry entangling gear away. In absence of better monitoring, characterization of such problems is often based on anecdotal information.

**Response:** NMFS has been often unable to identify lines wrapped on entangled whales conclusively or determine to which specific fishery gear belongs, including whether it is a commercial or recreational fishery. This is particularly difficult for pot gear, when often just a single line or line with an unidentified buoy is found associated with an entangled whale. This information is critically important in assigning fisheries under the LOF, and NMFS will only assign a serious injury or mortality to a specific fishery when gear can be identified to that fishery with a high degree of certainty. NMFS is working to improve the ability to identify such gear found on entangled whales.

NMFS agrees that quantifying entanglement rates in the trap/pot fishery would be difficult through an observer program due to the low likelihood of observing an entanglement. However, other means of collecting information on entanglements of marine mammals are also available. For example, information regarding fishery interactions with marine mammals is included in reports by fishermen collected under the Marine Mammal Authorization Program (MMAP), under which all commercial vessel owners or operators, regardless of the category of fishery they participate in, must report all incidental injuries and mortalities of marine mammals. Stranding data is also used to collect information on entanglements.

Trap/pot fisheries are of interest based on available information concerning trap/pot gear interactions with large whales in the Atlantic, Pacific, and Alaska, and bottlenose dolphins in the Southeast Atlantic and Gulf of Mexico. In the Atlantic Ocean and Gulf of Mexico, NMFS has funded, and plans to continue to fund based on available

resources, several research projects for mitigating blue crab trap/pot interactions with bottlenose dolphins in the Southeast Atlantic and Gulf of Mexico. Many of these projects have been incorporated into non-regulatory components of the Bottlenose Dolphin Take Reduction Plan. NMFS is considering folding trap/pot fisheries into the Atlantic Large Whale Take Reduction Plan (ALWTRP) in an upcoming action. The Atlantic Large Whale Take Reduction Team (ALWTRT) currently emphasizes the incorporation of the regional fishery management councils by asking council representatives to serve as team members. NMFS will raise this issue with council representatives at future meetings to further the discussion.

In the Pacific Ocean, NMFS plans to communicate with the Pacific Fisheries Management Council when considering current fishery descriptions for trap/pot fisheries, as well as when assessing potential changes to fishery descriptions to more accurately reflect differences in trap gear fisheries and the likelihood for interactions with marine mammals.

In Alaska, a high proportion of all humpback whale entanglements are thought to be from pot gear relative to other fishery sources, while in reality the proportion of entanglements resulting in known serious injuries and mortalities from known or assumed pot gear when compared to serious injury and mortalities from all entanglements is not as high. From 2001 through 2005 there were 40 humpback whale entanglements attributed to commercial or recreational fisheries, and 15 (37.5 percent) of those were thought to be from various pot gear, although that is not conclusive. Of those 40 humpback whale entanglements, 17 (42.5 percent) were serious injuries or mortalities, all attributed to commercial fisheries. Five of the 17 (29 percent) serious injuries or mortalities were thought to be from various pot gear. Therefore, from 2001–2005, 5 of the overall 40 humpback whale entanglements, or 12.5 percent, resulted in serious injuries or mortalities thought to be from various pot gear.

Determining whether an entanglement results in a serious injury (one that leads to mortality) is a challenge for NMFS, and an improved approach to this is needed, and the agency is working toward that end. In the Alaska region, NMFS is working to increase public awareness of the dangers to whales of vertical lines in the water column, and is asking for voluntary cooperation to minimize the amount of vertical line in the water column where possible and in marking personal and commercial gear.

Working with marine mammal researchers, the fishing industry, and NOAA Sea Grant over the past several years, the Alaska Stranding Program has increased community outreach.

Cooperative, ongoing efforts include community meetings, informal working groups, increased disentanglement response training, developing a vessel wheelhouse guide on preventive measures and reporting information, investigating deterrent uses, improved reporting, and acquisition of additional response equipment, including adding a response vessel to the program, and satellite telemetry tags and buoys. Ultimately, the goal is entanglement reduction and prevention.

**Comment 3:** One commenter stated that the length of the public comment period (30 days) on the proposed rule does not allow appropriate time for formal review and comment by Fishery Management Councils, protected resources committees, industry advisors, and individuals.

**Response:** NMFS believes the 30-day comment period allowed for adequate review and comment on this proposed rule.

**Comment 4:** One commenter noted that the categorization of fisheries under the MMPA is not congruent with fishery management units defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). Congruency between the definitions under MSFCMA and the categorization of fisheries under the MMPA would facilitate the process of moving towards an ecosystem approach to management, i.e., for the management of fisheries resources and the conservation of marine mammal stocks.

**Response:** The MSFCMA defines fishery listings based on fish species and fish stocks, while the MMPA defines fishery listings based on marine mammal stocks and their interactions with fishing gear types. Since multiple fishing gear types are usually covered under each Fishery Management Plan (FMP), categorizing marine mammal interactions with fisheries on an FMP basis is usually not appropriate. To help minimize confusion associated with the different fishery definitions, the agency will continue, as appropriate, to make modest changes to facilitate cooperation with regional Fishery Management Councils (see responses to comments 2 and 3).

**Comment 5:** The proposed rule states that less than 360 small entities will be affected by the LOF due to the cost of permits and that no economic costs will be incurred by vessels requested to carry an observer. This evaluation fails to recognize the burden of carrying an

observer, especially on smaller fishing vessels that may have to operate with one less crew member to accommodate the observer. This could lead to operational inefficiencies and loss of revenue.

**Response:** An Environmental Assessment (EA) was prepared for the Final 2006 LOF, which included a full Regulatory Impact Review (RIR). The effects on small entities were discussed and analyzed as part of the RIR. Impacts to small entities including the impacts associated with carrying an observer were adequately addressed. A full copy of the December 2005 EA can be obtained at: [http://www.nmfs.noaa.gov/pr/pdfs/interactions/lof\\_ea.pdf](http://www.nmfs.noaa.gov/pr/pdfs/interactions/lof_ea.pdf).

In addition, under section 118(d)(6)(B) of the MMPA, NMFS is not required to place an observer on a Category I or II vessel if the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized (also stated in 50 CFR 229.7(c)(3)).

**Comment 6:** NMFS did not provide sufficient notice in the proposed rule to inform fishermen that their fishery is proposed for elevation and the associated more stringent regulations. Also, the holiday season falling within the comment period (December 4, 2006–January 3, 2007) made it difficult to find credible information and to contact agency staff to allow public involvement.

**Response:** See Comment Response 3 above.

**Comment 7:** One commenter viewed the LOF fishery classification system as inaccurate, under which NMFS is downplaying the highly destructive nature of commercial fisheries. NMFS does not sufficiently monitor these fisheries; therefore, many more fisheries should be classified higher on the LOF to allow for observer coverage.

**Response:** NMFS believes that the fishery classification system is accurate. The current fishery classification system, which continues to be widely accepted by the scientific community and the fishing industry, is based on a two-tiered, stock-specific approach that first addresses the total impacts of all fisheries on each marine mammal stock and then addresses the impacts of individual fisheries on each stock.

Please see **SUPPLEMENTARY INFORMATION** for additional information on the classification criteria. NMFS implemented the classification criteria in the final regulations to implement the 1994 amendments to the MMPA (60 FR 45086, August 30, 1995) after ample consideration of comments and suggestions

from the public. NMFS also finalized an Environmental Assessment (EA) in August, 1995, to analyze the impacts of the regulations implementing the 1994 amendment on the environment and the public, and finalized a revised EA in December 2005 on the process of classifying U.S. commercial fisheries. To determine whether changes in fishery classification are warranted, NMFS reviews all marine mammal incidental injury and mortality information presented in the Stock Assessment Reports (SARs). NMFS' SARs are based on the best available scientific information available at the time of publication. The SARs are peer-reviewed by regional Scientific Review Groups (SRGs), created by the MMPA to review the science that informs the SRGs.

NMFS regularly monitors commercial fisheries in the U.S. and reviews data gathered by the National Observer Program, fisher self-reports, stranding data, and other information when categorizing fisheries based on the level of interactions with marine mammals. Category I and II fisheries are required to register with NMFS, to carry NMFS observers if requested, and comply with all applicable take reduction plan regulations. In addition, all fishermen, regardless of the classification of the fishery in which they operate, are required by the MMPA to report, within 48 hours of returning to port, any injury or mortality that occurs incidental to commercial fishing operations. NMFS also reviews other sources of information, such as stranding data, to assess whether elevation of a Category III fishery is warranted, thereby requiring the fishery to carry observers, if requested.

**Comment 8:** One commenter reiterated previous letters on the 2005 and 2006 LOFs calling for the inclusion of observer coverage on the LOF. The SARs usually include estimates of observer coverage only for fisheries known to interact with marine mammals, while fisheries for which interactions have not been documented in recent years are not described. Without this information, it is not possible to determine whether a given fishery was adequately observed and no interactions documented, or whether the fishery was not adequately observed and interactions may occur. For this reason, NMFS should describe the level of observer coverage for each fishery on the LOF.

**Response:** Including detailed information on the level, or percentage, of observer coverage to each fishery on the LOF will be of limited use without also including the confidence associated

with mortality/serious injury estimates generated from observer data. Presenting the level of observer coverage in the LOF without the associated confidence information will likely lead to misinterpretation of the information provided. Information including details of the interaction data, and the Coefficient of Variance (CV) for stock-specific information, is reported in the SARs. Please also see NMFS' response to a similar comment in the final LOF for 2006 (see Response to Comment 4 in 60 FR 48802, August 22, 2006).

NMFS continues to refer readers to the SARs for the most current, peer-reviewed information on observer coverage. Since 2005 each SARs includes an Appendix with Category I and II fishery-specific information, including the level of observer coverage; therefore, this information does not need to be duplicated in the LOF. NMFS is continuing to work to build and improve the fisheries interaction information presented in order to provide a useful source of information for the reader. NMFS will consider this comment when considering improvements to the SARs appendices. The SARs can be accessed through the NMFS Office of Protected Resource's web site at: <http://www.nmfs.noaa.gov/pr.sars/>. Additional information can also be found on the National Observer Program web site at: <http://www.st.nmfs.gov/st4/nop/>.

Information beyond stating "interactions have not been documented in recent years" would be useful as further explanation and support for changes in fishery classifications or additions and deletions of stocks from the list of marine mammal species or stocks incidentally killed/injured in a fishery. For this reason, NMFS will present information associated with the level of observer coverage or lack of observer coverage, if available, as part of the justification for proposing changes in future LOFs.

**Comment 9:** One commenter reiterated a previous comment made on the 2004 LOF for inclusion of high seas fisheries on the LOF. Multiple high sea fisheries, in which U.S. flagged vessels operate, are known to interact or are likely to interact with marine mammals. Section 118 of the MMPA applies to "commercial fishing operations by persons using vessels of the United States". Therefore, NMFS failure to include these high seas fisheries is unlawful. Specific fisheries suggested as additions are the Cobb Seamount fishery, Pacific Pelagic Squid Jig fishery, South Pacific Tuna Purse Seine fishery, and fisheries in the area of the Convention on the Conservation of

Antarctic Marine Living Resources (CCAMLR) including the Patagonian toothfish longline fishery and a trawl fishery for krill.

**Response:** NMFS is currently investigating available information on existing high seas fisheries in which U.S. nationals and flagged vessels participate, the estimated number of vessels/participants in these fisheries, and fishery interactions with marine mammal stocks on the high seas. NMFS will continue its investigation and consider the inclusion of high seas fisheries in future LOFs.

*Comments on Fisheries in the Pacific Ocean*

**Comment 10:** One commenter supported the elevation and addition of 3 Alaska fisheries, the AK Cook Inlet salmon set gillnet fishery, AK Cook Inlet salmon purse seine fishery, and AK Kodiak salmon purse seine fishery, to Category II.

**Response:** NMFS has added the AK Cook Inlet salmon set gillnet fishery as a Category II, and has elevated the AK Cook Inlet salmon purse seine fishery and the AK Kodiak salmon purse seine fishery to Category II, on the 2007 LOF.

**Comment 11:** One commenter stated that NMFS' proposed elevation or addition of 3 Alaska nearshore fisheries, the AK Cook Inlet salmon set gillnet fishery, AK Cook Inlet salmon purse seine fishery, and AK Kodiak salmon purse seine fishery, highlights the importance of monitoring interactions in state-managed fisheries. The Alaska Marine Mammal Observer Program (AMMOP) has not been funded sufficiently or consistently and does not provide an adequate basis for characterizing the full extent of such interactions. NMFS should increase and maintain funding for the AMMOP at levels sufficient for reasonable assessment of marine mammal take levels in AK state-managed fisheries or consider alternative means for assessing take levels and their population impacts.

**Response:** The cost of the Alaska Marine Mammal Observer Program is very high, relative to other observer programs around the country, due to the remote nature of the fisheries observed. To offset such high costs, NMFS is investigating alternatives to implementing full observer programs in these fisheries, such as observing focused portions of the fisheries.

**Comment 12:** Estimates of abundance and PBR level are not readily available for North Pacific sperm whales. NMFS should develop a scientifically sound estimate of this stock's abundance and PBR level that can be used to evaluate

potential fishery impacts. For example, sperm whales are known to depredate on catch in the sablefish longline fishery and at least one serious injury of a sperm whale has been observed, with the current estimate of injury/mortality at 0.45 whales/year. This rate may increase if depredation becomes more widespread.

**Response:** At this time, resources are not available to assess the abundance of North Pacific sperm whales in order to calculate a PBR level.

**Comment 13:** One commenter recommended NMFS expedite analyses of humpback whale stock structure in the North Pacific and increase efforts to observe entangled and stranded whales in southeastern Alaska to obtain accurate estimates of interactions with trap/pot fisheries. These analyses will better assess the potential impact of fishery interactions on the southeastern AK feeding aggregation of Central North Pacific humpback whales (which NMFS is currently considering designating as a separate stock), considering recent reports of stranded/entangled whales suggest interactions with trap/pot fisheries in southeastern Alaska may be unsustainable.

**Response:** The Structure of Populations, Levels of Abundance, and Status of Humpbacks (SPLASH) project collected information on humpback whales throughout the North Pacific. This project has only recently concluded. At this time, NMFS anticipates that some preliminary results may begin to be published in 2008 and may be considered during the preparation of the draft List of Fisheries for 2009.

**Comment 14:** One commenter referenced the case of a humpback whale removed from a set gillnet by NMFS personnel in June 2005. Although they were not successful in removing all the webbing, the animal swam away. We are not aware of conclusive information that provides a determination that mortality resulted from this incidental take.

**Response:** The Marine Mammal Protection Act (MMPA) requires that serious injuries and mortalities be included in consideration of the classification of fisheries under the annual List of Fisheries. NMFS has defined serious injury in 50 CFR 229.2 as an injury that is likely to lead to mortality. The agency convened a workshop in April 1997 to develop guidelines for a consistent approach for determining which injuries may be considered serious injuries. Results from that workshop were published as a NOAA Technical Memorandum in 1998 (NMFS-OPR-13, Angliss, R.P., and

D.P. DeMaster) and have been incorporated into the annual process of fisheries classification.

Current guidelines for making serious injuries determinations for marine mammals injuries resulting from entanglement in fishing gear include consideration of whether the animal's locomotion or feeding is or could be impaired by the entanglement. Information for each humpback whale entanglement in Alaska is reviewed by members of the Alaska Scientific Review Group (SRG), a Congressionally mandated regional advisory board to NMFS made up of marine mammal scientists. The SRG forwards to NMFS recommendations for each entanglement on whether the entanglement is likely to result in a serious injury or not. NMFS makes the final determination for each entanglement, taking into account the SRG's recommendation and the proper application of the serious injury determination guidelines.

NMFS anticipates holding a follow-up serious injury workshop in 2007 to update and advance the current guidelines for making serious injury determinations.

**Comment 15:** One commenter stated that the population of the Central North Pacific humpback whale stock appears to be increasing. Therefore, the take in the Cook Inlet set gillnet fishery, which is calculated to be 1.55 percent of the stock's PBR, should not trigger changing this fisheries' classification from Category III to Category II.

**Response:** There is evidence that the central North Pacific stock of humpback whales is increasing in at least portions of its range, such as in Southeast Alaska. However, it is not clear that this is the case throughout the range of the stock. Further, the results of the recent study of North Pacific humpback whales may indicate that the existing stock structure is incorrect and that smaller stocks may be more appropriate. Given the uncertainty in the rate of increase and stock structure, NMFS will classify this fishery using the classification criteria without adjusting for possible changes in abundance.

**Comment 16:** One commenter stated that the area in which the humpback whale take in 2005 occurred in Cook Inlet is remote, and that portion of the fishery is not conducted in the same time, area or methodology as 95 percent of the set gillnet fishery within Cook Inlet. The productivity of this small portion of the fishery is only 1 percent of the targeted sockeye salmon species. There has been no documented incidence with humpback whales in the Central or Northern districts of Upper Cook Inlet through the previous

observer program (1999–2000) or in the commercial fishery. Please consider listing Upper and Lower Cook Inlet set gillnet fisheries as separate fisheries on the List of Fisheries.

**Response:** NMFS organizes Alaska fisheries under the LOF by target, gear type, and geographic area. Separating the Upper and Lower Cook Inlet set gillnet fisheries into two fisheries on the LOF would not be consist with the scale of identification of other Alaska state and Federal fisheries on the LOF.

The Alaska Department of Fish and Game manages the state fisheries at the local scale to achieve the success that they have in maintaining sustainable fish population levels, because salmon fishery management is based in large part on achieving local escapement goals. However, NMFS manages marine mammals by stocks, which generally cover large geographic areas in Alaska. The fisheries within or across those areas are classified under the LOF in order to track the relative impacts of the fisheries on the marine mammal stocks. Because of the large scale of Alaska and the high number of small, local fisheries throughout the state, NMFS believes that the geographic areas and other variables used to identify fisheries under the LOF are comprehensive enough to detect potential concerns with marine mammal-fishery interactions, but not so large that the local source becomes unclear. Under circumstances outlined in the MMPA, when fishery-related serious injuries and mortalities reach a level which trigger the need to institute focused take reduction measures, a finer scale of review is instituted. In such cases, detailed differences in gear, area, timing, effort, and other variables would be taken into account to address specific sources of marine mammal incidental serious injuries and mortalities.

**Comment 17:** One commenter noted errors in the number of permits issued in, and management of, the WA/OR purse seine fishery. The proposed rule states that OR and WA issued 26 and 16 permits, respectively, for the 2004 fishery, when the correct number of permits was 20 and 21, respectively. At that time, the OR fishery was a developmental fishery and the WA fishery was an experimental fishery. In 2006 the OR fishery operated as a state run limited entry fishery and WA remained an experimental fishery.

**Response:** The commenter is correct. OR and WA issued 20 and 21 permits, respectively, for the WA/OR purse seine fishery in 2004. The figures provided in the proposed rule, 26 permits issued in OR and 16 in WA, were incorrectly associated with the fishery for 2004. In

fact, 26 and 16 permits were issued for OR and WA, respectively in 2006. The commenter is also correct that OR became a limited entry fishery in 2006, while WA remained an emerging fishery.

**Comment 18:** Two commenters recommended elevating the CA lobster, prawn, shrimp, rock crab, fish pot fishery and the WA/OR/CA crab pot fishery to Category II based on interactions with humpback and gray whales. Interactions with humpback whales off the CA coast are likely to exceed 1 percent of PBR (PBR = 1.9). At least 14 large whales were documented entangled in this gear type from 2000–2005.

**Response:** NMFS is aware of interactions between humpback and gray whales and pot and trap gear. The 2005 Pacific SAR indicates that there were six Eastern North Pacific humpback whales observed killed or injured between 1999 and 2003 attributed to unidentified fisheries. This results in a mean annual take of more than 1.2 humpback whales per year, which is greater than 1 percent of this stock's PBR of 2.3. Based upon available data from the California Marine Mammal Stranding Network Database, which is currently being reviewed and updated, five humpbacks were observed entangled in pot or trap gear between 1999 and 2003. Thus NMFS has initiated a review of the trap/pot fisheries to determine whether recategorization of the CA lobster, prawn, shrimp, rock crab, fish pot fishery or the WA/OR/CA crab pot fishery is appropriate. At this time, NMFS has insufficient information on the spatial and temporal distribution on these various fisheries to determine which fisheries may be interacting with marine mammals, particularly humpback whales. Stranding reports from the stranding network are not necessarily a reliable identifier of fishing gear types as it is difficult to distinguish different pot and trap gears from surface observations of line and floats. Therefore, NMFS will work with the States of California, Oregon, and Washington to characterize the state and Federal fisheries that utilize these gear types, and review observed marine mammal entanglement from stranding reports and limited data from observer programs, to determine which pot and trap fisheries are most likely to interact with marine mammals. NMFS will also consider if the current fishery descriptions should be adjusted to more accurately reflect spatial and temporal differences in the various pot and trap gear fisheries, the regulatory authority for the fisheries, and the likelihood of

interactions with marine mammals. NMFS will work with the states and the Pacific Fisheries Management Council during this process and make recommendations on fishery recategorizations once sufficient information has been collected and analyzed.

**Comment 19:** One commenter recommended NMFS observe the category III CA halibut bottom trawl fishery and reevaluate classification once reliable information on interactions with marine mammals becomes available. This fishery is similar to the WA/OR/CA groundfish trawl fishery, also Category III, which is known to interact with several marine mammal species.

**Response:** NMFS is planning to place observers on the CA halibut bottom trawl fishery beginning in 2007. Because this fishery has not been previously observed, NMFS reviewed the bottom trawl groundfish observer data and classified the CA halibut bottom trawl fishery as a Category III fishery based upon the level of interactions with marine mammals and by analogy to the WA/OR/CA groundfish trawl fishery based upon fishing methods and gear used. As of 2006, the State of California requires a license for vessels participating in the previously open-access CA halibut bottom trawl fishery. Thus NMFS will be able to deploy observers in this fleet starting in January 2007. Once the data are collected and analyzed, NMFS will re-evaluate the CA halibut bottom trawl fishery to determine if recategorization on the LOF is appropriate.

**Comment 20:** One commenter recommended NMFS reclassify the category I HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery as Category II, given the lack of evidence of geographic isolation or genetic distinction among "stocklet" populations of false killer whales in the U.S. Exclusive Economic Zone (EEZ) and false killer whales on the high seas, and given the genetic evidence of central and eastern Pacific stock overlap. Genetic samples taken by NMFS observers indicate substantial mixing and genetic overlap between central and eastern Pacific stocks. Therefore, false killer whales that interact with the Hawaii-based longline fisheries are not clearly identifiable as part of the HI EEZ or central Pacific stock. It inappropriate to charge all mortalities or serious injuries by HI-based longline fisheries against a HI EEZ stock when it is clear that some genetic samples of the injured or killed whales cannot be tracked to a genetically distinct HI population.

The commenter also noted errors and uncertainties in the false killer whale SARs, which underestimate false killer whale abundance and overestimate the seriousness of the HI longline fishery interactions with this species. NMFS improperly divides the central Pacific false killer whale stock into two stocklets, artificially reducing the abundance numbers against which HI longline fishery interactions are considered.

NMFS should also: (1) base final SAR and LOF decisions on a single, combined central Pacific stock of false killer whales across the HI and Palmyra Atoll EEZs and the central Pacific; (2) recognize the size of this single false killer whale stock is greater than the sum of the estimated populations of "stocklets" in the HI and Palmyra Atoll EEZs (i.e.  $\leq 1813$  animals); (3) derive values for minimum false killer whale population estimates and PBR levels based on the combined population numbers in the HI and Palmyra Atoll EEZs and the central Pacific; and (4) apportion mean annual take estimates attributable to the HI-based longline fisheries between a central and eastern false killer whale stock consistent with ongoing tissue sampling. This approach would result in an overall PBR for the single stock as 10.1 (2.4 for the HI EEZ + 7.7 for the Palmyra Atoll EEZ). With these changes HI-based longline fisheries would be well below 50 percent of PBR, qualifying the fishery for reclassification as a Category II. Also, a Category II classification would not affect the observer program requirements, which are a consequence of Endangered Species Act (ESA) consultation requirements.

**Response:** Genetic analyses of tissue samples collected within the Eastern North Pacific (ENP) indicate restricted gene flow between false killer whales sampled near the main Hawaiian Islands and false killer whales sampled in all other regions of the ENP (Chivers et al., 2006). False killer whales sampled at Palmyra Atoll appear more closely related to animals sampled in the waters of the pelagic ENP, Panama, and Mexico (Chivers et al., 2006). Thus, false killer whales occurring near Palmyra Atoll may be part of a larger stock covering a broad geographic area within the central and eastern North Pacific.

Since 2003, observers of the Hawaii-based longline fishery have also been collecting tissue samples of incidentally caught cetaceans for genetic analysis whenever possible. Four false killer whale samples, two collected outside the Hawaiian EEZ and two collected more than 100 nautical miles from the main Hawaiian Islands, were

determined to have ENP-like haplotypes. This suggests that false killer whales within the Hawaiian EEZ belong to two stocks, with a boundary somewhere within the Hawaiian EEZ. Efforts are currently underway to obtain and analyze additional tissue samples of false killer whales for further studies of population structure in the North Pacific Ocean.

Therefore, for the MMPA SARs, there are currently two Pacific Island Region management stocks. One includes animals found within the U.S. EEZ of the Hawaiian Islands, the other includes false killer whales found with the U.S. EEZ of Palmyra Atoll. Estimates of abundance, PBR levels, and status determinations are analyzed separately. Abundance estimates are based upon established scientific methods have been peer-reviewed and accepted by the Pacific SRG. The marine mammal stock assessment process under the MMPA was specifically designed to allow for levels of uncertainty similar to those observed for false killer whales.

Furthermore, NMFS has previously responded to a similar comment in our List of Fisheries for 2004 (69 FR 48407, August 10, 2004). In our Response to Comment 17 (69 FR 48413), NMFS stated: "The Hawaiian stock of false killer whales is considered a strategic stock under the MMPA because fishery related mortality and serious injury exceeds the PBR level for this stock (see 16 U.S.C. 1362(19)). Genetic analysis of samples from false killer whales in the North Pacific Ocean indicates population structure, but geographic boundaries of the various populations cannot yet be identified. However, the evidence for reproductive isolation and strong genetic differentiation of individuals sampled around Hawaii from individuals sampled in the ETP (Eastern Tropical Pacific) is solid. Furthermore, NMFS' current mortality and serious injury estimates are based only on takes within the U.S. EEZ and compared to PBR levels derived from abundance estimates for waters within the U.S. EEZ. In addition, even if the actual boundaries of the Hawaiian stock of false killer whales extended beyond the EEZ, the strategic status of the stock would not be changed. NMFS' guidelines for preparing marine mammal stock assessment reports contain specific instructions for calculating PBR of trans-boundary stocks. (The guidelines are available in electronic form at <http://nmml.afsc.noaa.gov/library/gammsrep/gammsrep.htm>). In cases such as false killer whales in the Hawaiian EEZ, where the stock could extend into international waters, the PBR would be

based on the abundance of animals within the EEZ. This guideline was established to prevent underestimating the effects of mortality and serious injury incidental to U.S. fisheries in international waters where unknown levels of additional human-caused mortality and serious injury (e.g., incidental to foreign fisheries in the same waters) may also be affecting the stock. NMFS does, however, plan to try to obtain additional genetic samples from a broader geographic range to help define stock boundaries."

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

**Comment 21:** Two commenters supported reclassification of the mid-Atlantic mid-water trawl fishery from category I to category II and supported findings that this fishery does not pose a serious risk or contribute to the mortality or serious injury of common dolphins, Western North Atlantic (WNA) stock, and long- and short-finned pilot whales, WNA stock. One commenter encouraged NMFS to maintain adequate observer coverage to provide robust estimates of mortality and serious injury, particularly to inform the Atlantic Trawl Gear Take Reduction Team (ATGTRT).

**Response:** Based on a recommendation made by the ATGTRT (September 2006), NMFS re-evaluated the classification of the mid-Atlantic mid-water trawl fishery as a Category I fishery on the LOF. After conducting a tier analysis, NMFS determined that reclassification as a Category II fishery is warranted.

It should be noted that the MMPA establishes a requirement that the level of incidental mortality and serious injury of marine mammals be reduced to insignificant levels approaching a zero rate, commonly referred to as the Zero Mortality Rate Goal (ZMRG). NMFS has established a threshold level for mortality and serious injury to meet the insignificance threshold requirement. NMFS has defined the insignificance threshold as 10 percent of the PBR level for a stock of marine mammals (69 FR 43338, July 20, 2004). Since the mid-Atlantic mid-water trawl fishery is a Category II fishery and the annual mortality and serious injury level is above the insignificance threshold, it remains subject to future TRPs developed by the ATGTRT.

NMFS will continue to allocate observer coverage to the maximum extent possible to meet MMPA requirements. NMFS will also try to make the best use of available resources by using existing research programs, programs operated by states or other

authorities, or alternative programs where statistically reliable information can be obtained.

**Comment 22:** One commenter requested further evidence of additional species being targeted with trap/pot gear in the mid-Atlantic region. It is unclear from the text in the proposed rule (71 FR 70339, December 4, 2006) which species are being added to the list of target species in the Atlantic mixed species trap/pot fishery.

**Response:** Clarification on which targeted species are being included in the expansion of species associated with the Atlantic mixed species trap/pot fishery can be found in the proposed 2007 LOF (71 FR 70346, December 4, 2006). NMFS added the category II Atlantic mixed species trap/pot fishery to the 2003 LOF to encompass the Northeast trap/pot fishery, the mid-Atlantic mixed species trap/pot fishery, the U.S. mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot fisheries and any other trap/pot fisheries otherwise not identified in the LOF, based on the use of similar gear and the potential for marine mammal entanglements. NMFS has recently become aware of additional species being targeted in this fishery including but not limited to: hagfish, shrimp, conch/whelk, red crab, Jonah crab, rock crab, black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), white hake, spot, skate, catfish and American eel (not included in the LOF's U.S. mid-Atlantic eel trap/pot fishery description) (71 FR 70346, December 4, 2006).

Evidence for this decision can be found in the Draft Environmental Impact Statement (DEIS) for Amending the Large Whale Take Reduction Plan (ALWTRP): Broad-Based Gear Modifications (February 2005), chapter 4 titled "Affected Environment". This chapter includes the reasoning for why the addition of these fisheries to the Atlantic mixed species trap/pot gear fishery is warranted.

**Comment 23:** NMFS used "anecdotal" data to help make a category determination for the Gulf of Maine Atlantic herring purse seine fishery (71 FR 70347, December 4, 2006). NMFS should present the objective criteria used to evaluate the legitimacy of anecdotal data and how such use satisfies the requirements of the Data Quality Act.

**Response:** In the 2007 proposed LOF, NMFS proposed to remove the Gulf of Maine/Bay of Fundy stock of harbor porpoises from the list of species or stocks incidentally killed or seriously injured in the Gulf of Maine Atlantic herring purse seine fishery. The

rationale for the removal of the harbor porpoise from this list comes from the most recent SAR (2005) which highlights the most recent 5 years of data (from 1999-2003) as well as anecdotal or historical information, as records of interaction. According to the SAR, there is currently no evidence indicating that harbor porpoises are killed or seriously injured in the Gulf of Maine Atlantic herring purse seine fishery (71 FR 70347, December 4, 2006). The removal of harbor porpoises from the list of species or stocks incidentally killed or injured has not resulted in a change in the category determination for the Gulf of Maine herring purse seine fishery, which is currently classified as a Category III fishery.

In order for the agency to determine which species or stocks are included as incidentally killed or seriously injured in a fishery, NMFS reviews the marine mammal incidental serious injury and mortality information presented in the most recent SARs for commercial fishing operations. Historical and/or anecdotal information is presented in the SARs to inform readers about past interactions and takes not observed through the fishery observer program. This information is not factored into the incidental take information that is collected through observer data. SARs are based on the best scientific information available at the time of preparation. The information contained in the SARs is reviewed by regional SRGs who review the science that informs the SARs and advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues. NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that may not be included in the SARs (71 FR 70342, December 4, 2006).

Information evaluated by NMFS that is disseminated to the public is required to comply with the Information Quality Act. The information used to classify fisheries for the 2007 LOF has undergone a predissemination review and is consistent with Information Quality Act requirements and NOAA guidelines. In the predissemination review, NMFS explains how the contents of the 2007 LOF meet the standards for utility, integrity, and objectivity established in the Information Quality Act and NOAA guidelines. The information in the 2007 LOF meets the standards for utility because it provides current, updated information on marine mammal

abundance and serious injury and mortality rates that is beneficial or serviceable to the public and affected fisheries. The information in the 2007 LOF is provided in a publicly accessible and broadly available document, published in the **Federal Register** and available through paper and electronic media, in which the updated information is an improvement over previously available information. The contents of the 2007 LOF meet the standards for integrity because the 2007 LOF adheres to the standards set out in the Computer Security Act and the Government Information Security Reform Act for electronic information disseminated by NOAA. The information in the 2007 LOF also meets the standards for objectivity. The LOF is categorized as a natural resource plan for purposes of Information Quality Act compliance, an information product that is prescribed by law and has content, structure, and public review processes based upon published standards. The 2007 LOF meets the standards for objectivity because it is published in compliance with the requirements of the MMPA, National Environmental Policy Act, Endangered Species Act, Coastal Zone Management Act, Administrative Procedures Act, Paperwork Reduction Act, and Executive Orders 13132 and 12866. The 2007 LOF is supported by the best available information, which has been reviewed by independent technically qualified individuals (i.e., SRG members) to ensure that the information is valid, complete, unbiased, and relevant. The peer review process of evaluating the SARs through the SRG allows the agency to maximize the objectivity and utility of the information the SARs promote.

**Comment 24:** One commenter supported the removal of superscript <sup>(1)</sup> from bottlenose dolphin (WNA) and minke whale (Canadian east coast) under the mid-Atlantic gillnet fishery.

**Response:** The superscript <sup>(1)</sup> next to the offshore bottlenose dolphins and minke whale stocks be removed under the mid-Atlantic gillnet fishery. The superscript <sup>(1)</sup> was defined to denote if a stock was responsible for a current fishery's classification (71 FR 70347, December 4, 2006). The tier analysis conducted in 1996 that drove classification of the mid-Atlantic gillnet fishery from category III to category II focused on the incidental mortality and serious injury for harbor porpoise, coastal bottlenose dolphin, and humpback whales (60 FR 67081, December 28, 1995). For reclassification to a category I fishery, the tier analysis was based on coastal bottlenose dolphins (68 FR 1422, January 10,

2003). Though offshore bottlenose dolphins and minke whales have the potential to interact with the mid-Atlantic gillnet fishery, these species have not influenced the fishery classification or its elevation; therefore, the superscript <sup>(1)</sup> has been removed.

**Comment 25:** Two commenters viewed the category I Mid-Atlantic gillnet fishery as too broad in classification. The definition encompasses a large range of mesh sizes, areas, and gear deployments (sink and anchored gillnet, drift net, stab net, etc.). This fishery should be stratified, perhaps by mesh size or target species. Stratification would allow for more precise estimation of marine mammal interactions by gear type and species targeted.

One commenter specifically recommended separating the bluefish and croaker portions from the generic mid-Atlantic gillnet fishery and redesignating each as either Category II or III. These fisheries have developed into two separate and distinct directed fisheries that are proven to pose little or no threat to marine mammals. The commenter reiterated a previous request that NMFS perform a separate Tier Analysis for both the bluefish and croaker portions of the mid-Atlantic gillnet fishery.

**Response:** NMFS acknowledges the information provided by the commenters on the potential for subdivisions within this fishery. Typically NMFS has bundled different targeted species into groups based on similar fishery characteristics unless there is information on marine mammal interaction rates or fishery operation to warrant a separate listing (see response to comment 4). Based on the best available (peer reviewed) information, NMFS does not find it appropriate to subdivide the bluefish and/or croaker mid-Atlantic gillnet fisheries at this time. The information currently available on the composition and distribution of the mid-Atlantic gillnet fishery and its incidental take levels is insufficient to identify distinct subcomponents of this fishery based on mesh size, area, or type of gear deployment. NMFS will investigate whether or not evidence exists to separate the bluefish and croaker portions of the mid-Atlantic gillnet fishery based on the criteria addressed above. If a reclassification is warranted, NMFS will propose these changes in a future LOF.

**Comment 26:** One commenter supported the addition of the mid-Atlantic flynet fishery as a Category II and encouraged NMFS to place observers aboard vessels in this fishery

to obtain the necessary information to assess the frequency of interactions.

**Response:** The mid-Atlantic flynet fishery has been observed opportunistically out of Wanchese, NC. During observed trips, no marine mammal takes were observed. Since this is a Category II fishery, NMFS may place observers in the fishery to further assess the frequency of marine mammal interactions; however, initiation of observer coverage is dependent on resources. NMFS also notes that self-reporting of injuries and mortalities of marine mammals by fishers is required by the MMPA. For this purpose, NMFS developed the MMAP Mortality/Injury Report Form, which is available at: [http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap\\_reportin\\_form.pdf](http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reportin_form.pdf)

**Comment 27:** One commenter requested further information and description of the specific gear types used to list the mid-Atlantic flynet fishery as a category II by analogy with other category II bottom trawl fisheries.

**Response:** The flynet fishery was listed as a Category II fishery because of its similarities to other Category II bottom trawl fisheries in terms of gear configuration, seasons and areas fished, and target species. As described in the proposed rule, flynets are high profile trawls similar to bottom otter trawls, except that they fish just off the bottom, rather than on the bottom. Fishermen use flynets to target summer flounder, croaker, and weakfish in waters off North Carolina from October through April. The flynet fishery is analogous to the Category II mid-Atlantic bottom trawl fishery, which, as defined in the LOF, includes any bottom trawl gear targeting a wide range of species, including, but not limited to, monkfish, summer flounder (fluke), winter flounder, silver hake (whiting), spiny dogfish, smooth dogfish, scup, black sea bass, bluefish, and croaker. This fishery operates year-round from Cape Cod, MA to Cape Hatteras, NC. Because of the similarities between these two fisheries, they present a similar risk of serious injury and mortality to marine mammals; therefore, the mid-Atlantic flynet fishery warrants a Category II classification.

**Comment 28:** One commenter stated that several fisheries in the Gulf of Mexico are known to injure and kill marine mammals, particularly bottlenose dolphins. The commenter raised concern in previous letters from 2003, 2004, 2005, and 2006, about the uncertainties of interactions with Gulf of Mexico fisheries (in particular the Gulf of Mexico blue crab trap/pot fishery and the Gulf of Mexico menhaden purse seine fishery) and the

unreliable information about bottlenose dolphin stock structure in the Gulf of Mexico. Since there is no evidence that research on bottlenose dolphin stock structure will take place in the near future, NMFS should expand its efforts to collect reliable information on interaction rates of marine mammals incidental to Gulf of Mexico fisheries, with priority given to an observer program for the Gulf of Mexico blue crab/trap pot fishery and the Gulf of Mexico menhaden purse seine fishery.

**Response:** Investigating bottlenose dolphin stock structure in the Gulf of Mexico is a high priority for NMFS, and efforts to update abundance estimates are underway. For northern Gulf of Mexico coastal stocks, aerial surveys began in January 2007 for the northern and eastern stocks from the mouth of the Mississippi River Delta to Key West, Florida. At least two abundance estimates per year are planned for the Bays, Sounds, and Estuarine stocks for the northern Gulf of Mexico. Additionally, a ship survey that will include the northern Gulf of Mexico continental shelf stock is being planned for the summer of 2007.

More information is needed on interactions rates with marine mammals in the Gulf of Mexico menhaden purse seine fishery. NMFS recently elevated this fishery to Category II based on documented serious injury and mortality to bottlenose dolphins. Because this is a Category II fishery, NMFS may place observers in the fishery to better assess the frequency of marine mammal interactions. While this fishery is a high priority for observer coverage, initiation of observer coverage is dependent on resources.

NMFS will continue to monitor blue crab fishing effort in the Gulf of Mexico and evaluate bottlenose dolphin strandings for evidence of trap/pot-related fishery interactions to determine the need for future reclassification of the fishery. NMFS has made efforts to train stranding responders in assessing and better documenting human interactions, and will continue efforts to work with the Gulf of Mexico Marine Fisheries Commission on outreach and derelict crab trap removals to reduce the risk of trap/pot interactions with marine mammals.

**Comment 29:** Two commenters recommended NMFS elevate the Gulf of Mexico blue crab trap/pot fishery to Category II based on the level of bottlenose dolphin mortality and serious injury obtained from available stranding data. The commenters also recommended NMFS elevate the Gulf of Mexico menhaden purse seine fishery to Category I. One commenter previously

commented on the classification of these fisheries and the need for an observer program to obtain more reliable information about bottlenose stock structure and interactions with fisheries in the Gulf of Mexico in letters from 2003, 2004, 2005, and 2006.

**Response:** More information is needed on interaction rates with marine mammals in the Gulf of Mexico menhaden purse seine fishery, as well as an increased understanding of stock structure of bottlenose dolphins in this area. NMFS recently elevated this fishery to a Category II based on documented serious injury and mortality to bottlenose dolphins, thus, NMFS may place observers in the fishery to better assess the frequency of marine mammal interactions. At this time, NMFS believes that more information is needed prior to considering elevating this fishery to Category I.

**Comment 30:** One commenter recommended that NMFS elevate the Gulf of Mexico gillnet fishery to Category I.

**Response:** At this time, there is no evidence to support a Category I classification for the Gulf of Mexico gillnet fishery. This fishery is currently listed as a Category II based on analysis of bottlenose dolphin stranding data. NMFS will continue to monitor fishing effort and evaluate bottlenose dolphin strandings for evidence of gillnet-related fishery interactions in the Gulf of Mexico to determine the need for future reclassification of this fishery. As with other Gulf of Mexico fisheries interacting with bottlenose dolphins, this fishery is a high priority for observer coverage, but initiation of coverage is dependent on resources.

**Comment 31:** One commenter recommended NMFS elevate the Caribbean gillnet fishery to Category I because it is known to injure or kill Antillean manatees, a highly endangered species. Therefore, any mortality or serious injury results in levels above 50 percent of PBR.

**Response:** NMFS discussed this comment with the U.S. Fish and Wildlife Service (USFWS), the agency with responsibility for the Antillean manatee stock of the West Indian Manatee. The USFWS is unsure of the source of information used by the commenter to support the statement that the Caribbean gillnet fishery is "known to injure or kill Antillean manatees". The commenter may have referenced the USFWS SAR for the Antillean stock of the West Indian Manatee. This SAR expresses concern for the status of the Antillean manatee as it relates to local fisheries. This SAR was written in 1995

and was reflective of the best available information present at that time. The USFWS has not updated this SAR since it was originally written. Pursuant to publication of the USFWS' forthcoming "Five-year Status Review of the West Indian Manatee" in 2007, which indicates that the status of manatees within this region is improving, the USFWS plans to update and revise the SAR for this stock. The revised SAR will incorporate the best currently available information and should address concerns that may be expressed regarding the impact of this fishery on the Antillean manatee.

The USFWS reviewed its records pertaining to the Antillean manatee within its range in Puerto Rico and the U.S. Virgin Islands. The latest mortality information from the region indicates that no mortalities or injuries from a historical fishery for manatees have been observed since 1995. These records also document a single manatee death attributed to an incidental entanglement in a gillnet over the same period of time. Therefore, elevation of the Caribbean gillnet fishery is not warranted at this time based on the low level of fisheries-related interactions over the past 12 years, combined with recent information suggesting that the status of manatees within this region is improving.

#### Summary of Changes to the LOF for 2007

The following summarizes changes to the LOF for 2007 in fishery classification, fisheries listed on the LOF, the number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery. The placement and definition of U.S. commercial fisheries for 2007 are identical to those provided in the LOF for 2006 with the following exceptions.

#### Commercial Fisheries in the Pacific Ocean

##### Fishery Classification

The "AK Cook Inlet salmon set gillnet fishery" is elevated from Category III to Category II.

##### Addition of Fisheries to the LOF

The "WA, OR sardine purse seine fishery" is added to the LOF as a Category III fishery.

The "CA halibut bottom trawl fishery" is added to the LOF as a Category III fishery.

The "CA tuna purse seine fishery" is added to the LOF as a Category II fishery.

The “AK Cook Inlet salmon purse seine fishery” is added to the LOF as a Category II fishery.

The “AK Kodiak salmon purse seine fishery” is added to the LOF as a Category II fishery.

#### Removal of Fisheries from the LOF

The “CA sardine purse seine fishery” is removed from the LOF.

The “CA herring purse seine fishery” is removed from the LOF.

#### Fishery Name and Organizational Changes and Clarifications

The definition of superscript <sup>(1)</sup>in “Table 1- List of Fisheries Commercial Fisheries in the Pacific Ocean” is modified from “...1...greater than 1 percent, but less than 50 percent of the stock’s PBR” to read “...1...greater than 1 percent of the stock’s PBR.”

The “Hawaii gillnet fishery” is renamed the “Hawaii inshore gillnet fishery”.

The “Hawaii purse seine fishery” is renamed the “Hawaii inshore purse seine fishery”.

The “CA yellowtail, barracuda, white seabass, and tuna drift gillnet (mesh size >3.5 inches and <14 inches) fishery” is renamed the “CA yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 inches and <14 inches) fishery”.

The “CA anchovy, mackerel, tuna purse seine fishery” and the “CA sardine purse seine fishery” are reorganized by switching the sardine and tuna portions of the fisheries. The end result is the “CA anchovy, mackerel, sardine purse seine fishery” and the “CA tuna purse seine fishery”.

#### Number of Vessels/Persons

The estimated number of participants in the “Commonwealth of Northern Mariana Islands tuna troll fishery” is updated to 88.

The estimated number of participants in the “Guam tuna troll fishery” is updated to 401.

The estimated number of participants in the “American Samoa longline fishery” is updated to 60.

The estimated number of participants in the “Guam bottomfish fishery” is updated to 200.

The estimated number of participants in the “HI Main Hawaiian Islands, Northwestern Hawaiian Islands deepsea bottomfish fishery” is updated to 300. The waters surrounding the Northwestern Hawaiian Islands (NWHI), out to a distance of approximately 50 nmi from the islands, have been designated as part of the Papahanaumoku kea Marine National Monument by Proclamation 8031 (June 15, 2006). Proclamation 8031 limits the

number of bottomfish fishery participants in the Monument to 8 commercial fishermen permitted at the time of designation to fish for certain species within particular zones in the Monument. These 8 permittees are authorized to continue fishing in the Monument until June 15, 2011.

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

The CA/OR/WA stocks of Baird’s beaked whale, Cuvier’s beaked whale, Mesoplodont beaked whale, pygmy sperm whale, and striped dolphin, the CA/OR/WA offshore stock of bottlenose dolphin, the Eastern North Pacific offshore stock of killer whale, the San Miguel Island stock of northern fur seal, and the Eastern U.S. stock of Steller sea lion are removed from the list of marine mammal species and stocks incidentally killed or injured by the “CA/OR swordfish/thresher shark drift gillnet fishery”. Also, the humpback whale stock from the list of marine mammal species and stocks incidentally injured or killed is changed from CA/OR/WA-Mexico to Eastern North Pacific.

The Eastern North Pacific stocks of humpback whale and gray whale, and the CA stock of harbor seal are added to the list of marine mammal species and stocks incidentally killed or injured in the “CA lobster, prawn, shrimp, rock crab, fish pot fishery”.

The Eastern North Pacific stock of humpback whale is added to the list of marine mammal species and stocks incidentally killed or injured in the “WA, OR, CA crab pot fishery”.

#### Technical Corrections

The proposed LOF for 2007 contained multiple errors in Table 1, “List of Fisheries Commercial Fisheries in the Pacific Ocean”, due to technical difficulties in merging the proposed 2007 LOF document between computers for printing in the **Federal Register**. These errors have been corrected in this final rule. Errors corrected in Table 1, in addition to general formatting errors, include:

Addition of the “AK Cook Inlet salmon purse seine fishery” as Category II. The text of the proposed rule proposed to add this fishery, but the addition was not reflected in Table 1.

Correction to the number of participants in the “American Samoa tuna troll fishery” from >50 to <50. The 2007 LOF did not propose to change the number of participants in this fishery; therefore, the change in the table was incorrect.

Addition of the South Central Alaska stock of sea otters to the list of marine mammal species or stocks incidentally

killed or injured in the “AK Prince William Sound salmon drift gillnet fishery”. The deletion of this stock from Table 1 was incorrect. This stock remains a stock that is incidentally killed or injured in this fishery.

Deletion of common dolphin, stock unknown, from the list of marine mammal species or stocks incidentally killed or injured in the “CA tuna purse seine fishery”. There are no documented takes of any marine mammal species or stocks in this fishery.

Correction to the name change of the “CA anchovy, mackerel, sardine purse seine fishery”. This change was discussed in the text of the proposed rule but was not reflected in Table 1.

Correction of the number of participants in the “CA anchovy, mackerel, sardine purse seine fishery”. Table 1 should read 100 participants, not 110 participants.

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

The “Mid-Atlantic mid-water trawl (including pair trawl) fishery” is recategorized from Category I to Category II.

#### Addition of Fisheries to the LOF

The “Mid-Atlantic flynet fishery” is added to the LOF as a Category II.

#### Fishery Name and Organizational Changes and Clarifications

The definition of superscript <sup>(1)</sup>in Table 2, “List of Fisheries Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean” is modified from “...1...greater than 1 percent, but less than 50 percent of the stocks PBR” to read “...1...greater than 1 percent of the stock’s PBR.”

The definition of the “Southeastern U.S. Atlantic shark gillnet fishery” is clarified to include fishermen using gillnets set in a sink, stab, set, strike, or drift fashion to target sharks.

The definition of the “Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery” is clarified to include fishermen using pelagic longlines to target or land dolphin and wahoo.

The language defining the “Northeast sink gillnet fishery”, the “Northeast anchored float gillnet fishery”, and the “Northeast drift gillnet fishery” is changed by removing "...from the Maine/Canada border through the waters east of 72° 30' W..." (62 FR 33, January 2, 1997) from all three fisheries descriptions and replacing this with "...from the U.S./Canada border to Long Island, NY, at 72° 30' W. long, south to

36° 33.03' N. lat. and east to the eastern edge of the EEZ....".

The list of target species associated with the "Northeast sink gillnet fishery" is expanded to include, but not be limited to: all species defined in the Northeast Multispecies FMP (American plaice, Atlantic cod, Atlantic halibut, haddock, ocean pout, offshore hake, pollock, red hake [ling], redfish, silver hake [whiting], white hake, windowpane flounder, winter flounder, witch flounder and yellowtail flounder), spiny dogfish, monkfish, shad, skate and mackerel.

The list of target species associated with the "Northeast anchored float gillnet fishery" is expanded to include, but not be limited to: shad, herring, mackerel and menhaden.

The list of target species associated with the "Northeast drift gillnet fishery" is expanded to include, but not be limited to: shad, herring, mackerel and menhaden.

The list of target species associated with the "Mid-Atlantic gillnet fishery" is expanded to include, but not be limited to: Atlantic croaker, mackerel, black drum, bluefish, herring, menhaden, scup, shad, striped bass, weakfish, white perch, yellow perch, shark (large and small coastal shark, dogfish), and monkfish, spot, and skate. Spot and skate were inadvertently deleted from the list of targets species in the proposed 2007 LOF. Spot and skate are targets species in this fishery and are added to the list of target species in the final 2007 LOF.

The type of gear associated with the "Mid-Atlantic gillnet fishery" is expanded to include gillnets set in a sink, stab, set, strike, or drift fashion, and any residual large pelagic driftnet effort in the mid-Atlantic.

The language defining the "Mid-Atlantic gillnet fishery" is changed by removing "...west of 72° 30' W. and north of a line extending due east from the North Carolina/South Carolina border..." (62 FR 33, January 2, 1997) and replacing this with "...west of a line drawn at 72° 30' W. long south to 36° 33.03' N. lat. and east to the eastern edge of the EEZ and north of the North Carolina/South Carolina border...".

NMFS clarifies in this final rule that the trap/pot effort targeting stone crab off Georgia is part of the Category II "Atlantic Mixed Species Trap/Pot Fishery", which includes all trap/pot operations for species other than American lobster and blue crab from the Maine/Canada border through the waters east of the fishery management demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105). After the comment period for

the proposed 2007 LOF closed, NMFS became aware of emerging pot fishery for stone crab operating in an area off Georgia not previously known to sustain a directed stone crab fishery. Stone crab pot fishing off Georgia is not considered part of the Category III "Southeastern US Atlantic, Gulf of Mexico Stone Crab Trap/Pot Fishery" because that fishery is tied to the Gulf of Mexico Stone Crab FMP, which only includes south Atlantic waters as far north as Miami. Therefore, NMFS clarifies that the list of target species associated with the "Atlantic mixed species trap/pot fishery" is expanded to include, but not be limited to: hagfish, shrimp, conch/whelk, red crab, Jonah crab, rock crab, black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), white hake, spot, skate, catfish and American eel (not included in the LOF's "U.S. mid-Atlantic eel trap/pot fishery" description), and stone crab.

#### Number of Vessels/Persons

The number of participants in the "Southeastern U.S. Atlantic shark gillnet fishery" is updated to 30.

The number of participants in the "Mid-Atlantic gillnet fishery" is updated to >670.

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

The superscript (1) is removed from the Western North Atlantic stocks of common dolphins, long-finned pilot whales, and short-finned pilot whales under the "Mid-Atlantic mid-water trawl (including pair trawl) fishery" in Table 2.

The Western North Atlantic stock of Northern bottlenose whales is added to the list of species and stocks incidentally killed or injured in the "Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery".

The Gulf of Maine/Bay of Fundy stock of harbor porpoise is removed from the list of species or stocks incidentally killed or injured in the "Mid-Atlantic haul/beach seine fishery".

The Gulf of Maine/Bay of Fundy stock of harbor porpoise is removed from the list of species or stocks incidentally killed or injured in the "Gulf of Maine Atlantic herring purse seine fishery".

The superscript (1) is removed from the Western North Atlantic offshore stock of bottlenose dolphin and the Canadian east coast stock of minke whale under the "Mid-Atlantic gillnet fishery" in Table 2.

To correct a typographical error, the superscript (1) is

removed from the Western North Atlantic stock of harp seals under the

"Northeast bottom trawl fishery" in Table 2.

#### Technical Corrections

The proposed LOF for 2007 contained multiple formatting errors and one substantive error in Table 2, "List of Fisheries Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean", due to technical difficulties in merging the proposed 2007 LOF document between computers for printing in the **Federal Register**. These errors have been corrected in Table 2 of this final rule. The substantive error corrected removed the superscript (1) from the Western North Atlantic stock of harp seal from the "Northeast bottom trawl fishery", which was discussed in the text of the proposed 2007 LOF but was not reflected in Table 2 of the proposed rule. The superscript (1) has been removed from Table 2 in this final rule.

#### List of Fisheries

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

The tables also list the marine mammal species and stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience mortality or injury in a given fishery, but also includes species or stocks for which there are anecdotal records of interaction. Additionally, species identified by logbook entries may not be verified. Not all species or stocks identified are the reason for a fishery's placement in a given category. NMFS has designated those stocks that are responsible for a current fishery's classification by a "(1)".

There are several fisheries classified in Category II that have no recently documented interactions with marine mammals, or interactions that did not result in a serious injury or mortality. Justifications for placement of these fisheries, which are greater than 1 percent of a stock's PBR level, are by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as discussed

in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of a "Category II fishery" in 50 CFR 229.2. NMFS has designated those fisheries

originally listed by analogy in Tables 1 and 2 by a "2" after the fishery's name.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the

Atlantic Ocean, Gulf of Mexico, and Caribbean.

TABLE 1 - LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
<b>Category I</b>		
<b>GILLNET FISHERIES:</b>		
CA angel shark/halibut and other species set gillnet(> 3.5 in. mesh)	58	California sea lion, U.S. Harbor seal, CA Harbor porpoise, Central CA <sup>1</sup> Long-beaked common dolphin, CA Northern elephant seal, CA breeding Sea otter, CA Short-beaked common dolphin, CA/OR/WA
CA/OR thresher shark/swordfish drift gillnet ( $\geq$ 14 in. mesh)	85	California sea lion, U.S. Dall's porpoise, CA/OR/WA Fin whale, CA/OR/WA Gray whale, Eastern North Pacific Humpback whale, Eastern North Pacific Long-beaked common dolphin, CA Northern elephant seal, CA breeding Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA <sup>1</sup> Sperm whale, CA/OR/WA
<b>LONGLINE/SET LINE FISHERIES:</b>		
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line	140	Blainville's beaked whale, HI Bottlenose dolphin, HI False killer whale, HI <sup>1</sup> Humpback whale, Central North Pacific Pantropical spotted dolphin, HI Risso's dolphin, HI Short-finned pilot whale, HI Spinner dolphin, HI Sperm whale, HI
<b>Category II</b>		
<b>GILLNET FISHERIES:</b>		
AK Bristol Bay salmon drift gillnet <sup>2</sup>	1,903	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Spotted seal, AK Steller sea lion, Western U.S. <sup>1</sup>
AK Bristol Bay salmon set gillnet <sup>2</sup>	1,014	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Spotted seal, AK

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

Fishery Description	Esti-mated # of ves-sels/pe- sons	Marine mammal species and stocks incidentally killed/injured
AK Cook Inlet salmon set gillnet	745	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Humpback whale, Central North Pacific <sup>1</sup> Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	576	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA <sup>1</sup> Harbor seal, GOA Steller sea lion, Western U.S.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA <sup>1</sup> Harbor seal, GOA Sea otter, Southwest AK Steller sea lion, Western U.S.
AK Metlakatla/Annette Island salmon drift gillnet <sup>2</sup>	60	None documented
AK Peninsula/Aleutian Islands salmon drift gillnet <sup>2</sup>	164	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet <sup>2</sup>	116	Harbor porpoise, Bering Sea Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	541	Dall's porpoise, AK Harbor porpoise, GOA <sup>1</sup> Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Sea Otter, South Central AK Steller sea lion, Western U.S. <sup>1</sup>
AK Southeast salmon drift gillnet	481	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific <sup>1</sup> Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet <sup>2</sup>	170	Gray whale, Eastern North Pacific Harbor seal, Southeast AK Humpback whale, Central North Pacific (Southeast AK)
CA yellowtail, barracuda, and white seabass drift gillnet fishery (mesh size > 3.5 inches and < 14 inches) <sup>2</sup>	24	California sea lion, U.S. Long-beaked common dolphin, CA Short-beaked common dolphin, CA/OR/WA
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded)	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA <sup>1</sup> Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Southeast salmon purse seine	416	Humpback whale, Central North Pacific <sup>1</sup>
AK Cook Inlet salmon purse seine	82	Humpback whale, Central North Pacific <sup>1</sup>
AK Kodiak salmon purse seine	370	Humpback whale, Central North Pacific <sup>1</sup>
CA anchovy, mackerel, sardine purse seine	100	Bottlenose dolphin, CA/OR/WA offshore <sup>1</sup> California sea lion, U.S. Harbor seal, CA

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

Fishery Description	Esti-mated # of ves-sels/peo- ples	Marine mammal species and stocks incidentally killed/injured
CA squid purse seine	65	Common dolphin, unknown Short-finned pilot whale, CA/OR/WA <sup>1</sup>
CA tuna purse seine <sup>2</sup>		None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands flatfish trawl	26	Bearded seal, AK Harbor porpoise, Bering Sea Harbor seal, Bering Sea Killer whale, AK resident <sup>1</sup> Northern fur seal, Eastern North Pacific Spotted seal, AK Steller sea lion, Western U.S. <sup>1</sup> Walrus, AK
AK Bering Sea, Aleutian Islands pollock trawl	120	Dall's porpoise, AK Harbor seal, AK Humpback whale, Central North Pacific <sup>1</sup> Humpback whale, Western North Pacific <sup>1</sup> Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Ber- ing Sea transient <sup>1</sup> Minke whale, AK Ribbon seal, AK Spotted seal, AK Steller sea lion, Western U.S. <sup>1</sup>
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Pacific cod longline	114	Killer whale, AK resident <sup>1</sup> Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Ber- ing Sea transient <sup>1</sup> Ribbon seal, AK Steller sea lion, Western U.S.
CA pelagic longline <sup>2</sup>	6	California sea lion, U.S. Risso's dolphin, CA/OR/WA
OR swordfish floating longline <sup>2</sup>	0	None documented
OR blue shark floating longline <sup>2</sup>	1	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific <sup>1</sup> Humpback whale, Western North Pacific <sup>1</sup>
Category III		
GILLNET FISHERIES:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Harbor seal, GOA Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less	341	None documented
Hawaii inshore gillnet	35	Bottlenose dolphin, HI Spinner dolphin, HI

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

Fishery Description	Esti-mated # of ves-sels/pe- sons	Marine mammal species and stocks incidentally killed/injured
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented
AK octopus/squid purse seine	2	None documented
AK roe herring and food/bait herring beach seine	8	None documented
AK roe herring and food/bait herring purse seine	624	None documented
AK salmon beach seine	34	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II)	953	Harbor seal, GOA
WA, OR sardine purse seine	42	None documented
HI Kona crab loop net	42	None documented
HI opelu/akule net	12	None documented
HI inshore purse seine	23	None documented
HI throw net, cast net	14	None documented
WA (all species) beach seine or drag seine	235	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA marine shellfish aquaculture	unknown	None documented
CA salmon enhancement rearing pen	>1	None documented
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented
OR salmon ranch	1	None documented

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

Fishery Description	Esti-mated # of ves-sels/pe- sons	Marine mammal species and stocks incidentally killed/injured
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA, OR, CA alba-core, groundfish, bottom fish, CA halibut non-salmonid troll fisheries	1,530 (330 AK)	None documented
AK salmon troll	2,335	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	< 50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	88	None documented
Guam tuna troll	401	None documented
HI trolling, rod and reel	1,321	None documented
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Greenland turbot longline	12	Killer whale, AK resident Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient
AK Bering Sea, Aleutian Islands rockfish longline	17	None documented
AK Bering Sea, Aleutian Islands sablefish longline	63	None documented
AK Gulf of Alaska halibut longline	1,302	None documented
AK Gulf of Alaska Pacific cod longline	440	None documented
AK Gulf of Alaska rockfish longline	421	None documented
AK Gulf of Alaska sablefish longline	412	Sperm whale, North Pacific Steller sea lion, Eastern U.S.
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (includ-ing sablefish, rockfish, and miscellaneous finfish)	731	None documented
American Samoa longline	60	None documented
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	8	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	87	Harbor seal, Bering Sea Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands rockfish trawl	9	None documented
AK Gulf of Alaska flatfish trawl	52	None documented
AK Gulf of Alaska Pacific cod trawl	101	Steller sea lion, Western U.S.

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Gulf of Alaska pollock trawl	83	Fin whale, Northeast Pacific Northern elephant seal, North Pacific Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	45	None documented
AK food/bait herring trawl	3	None documented
AK miscellaneous finfish otter or beam trawl	6	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
CA halibut bottom trawl	53	None documented
WA, OR, CA groundfish trawl	585	California sea lion, U.S. Dall's porpoise, CA/OR/WA Harbor seal, OR/WA coast Northern fur seal, Eastern Pacific Pacific white-sided dolphin, CA/OR/WA Steller sea lion, Eastern U.S.
WA, OR, CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Aleutian Islands sablefish pot	8	None documented
AK Bering Sea, Aleutian Islands Pacific cod pot	76	None documented
AK Bering Sea, Aleutian Islands crab pot	329	None documented
AK Gulf of Alaska crab pot	unknown	None documented
AK Gulf of Alaska Pacific cod pot	154	Harbor seal, GOA
AK Southeast Alaska crab pot	unknown	Humpback whale, Central North Pacific (Southeast AK)
AK Southeast Alaska shrimp pot	unknown	Humpback whale, Central North Pacific (Southeast AK)
AK octopus/squid pot	72	None documented
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Gray whale, Eastern North Pacific Harbor seal, CA Humpback whale, Eastern North Pacific Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	Humpback whale, Eastern North Pacific Gray whale, Eastern North Pacific
WA, OR, CA sablefish pot	176	None documented
WA, OR shrimp pot/trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	0	Hawaiian monk seal
HI shrimp trap	5	None documented

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
<b>HANDLINE AND JIG FISHERIES:</b>		
AK miscellaneous finfish handline and mechanical jig	100	None documented
AK North Pacific halibut handline and mechanical jig	93	None documented
AK octopus/squid handline	2	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	200	None documented
HI aku boat, pole and line	4	None documented
HI Main Hawaiian Islands, Northwest Hawaiian Islands deep sea bottomfish	300	Hawaiian monk seal
HI inshore handline	307	None documented
HI tuna handline	298	Hawaiian monk seal
WA groundfish, bottomfish jig	679	None documented
Western Pacific squid jig	6	None documented
<b>HARPOON FISHERIES:</b>		
CA swordfish harpoon	30	None documented
<b>POUND NET/WEIR FISHERIES:</b>		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented
<b>BAIT PENS:</b>		
WA/OR/CA bait pens	13	California sea lion, U.S.
<b>DREDGE FISHERIES:</b>		
Coastwide scallop dredge	108 (12 AK)	None documented
<b>DIVE, HAND/MECHANICAL COLLECTION FISHERIES:</b>		
AK abalone	1	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	3	None documented
AK herring spawn on kelp	363	None documented
AK urchin and other fish/shellfish	471	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI black coral diving	1	None documented
HI fish pond	N/A	None documented

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
HI handpick	37	None documented
HI lobster diving	19	None documented
HI squidding, spear	91	None documented
WA, CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHAR-TER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	Killer whale, stock unknown Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
HI charter vessel	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented

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

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured	
<b>Category I</b>			
<b>GILLNET FISHERIES:</b>			
Mid-Atlantic gillnet	>670	Bottlenose dolphin, WNA coastal <sup>1</sup> Bottlenose dolphin, WNA offshore Common dolphin, WNA Gray seal, WNA Harbor porpoise, GME/BF <sup>1</sup> Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine <sup>1</sup> Long-finned pilot whale, WNA Minke whale, Canadian east coast Short-finned pilot whale, WNA White-sided dolphin, WNA	
Northeast sink gillnet	341	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF <sup>1</sup> Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, WNA <sup>1</sup> Minke whale, Canadian east coast <sup>1</sup> North Atlantic right whale, WNA <sup>1</sup> Risso's dolphin, WNA White-sided dolphin, WNA	

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
<b>LONGLINE FISHERIES:</b>		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	94	Atlantic spotted dolphin, Northern GMX Atlantic spotted dolphin, WNA Bottlenose dolphin, GMX outer continental shelf Bottlenose dolphin, GMX, continental shelf edge and slope Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA <sup>1</sup> Mesoplodon beaked whale, WNA Northern bottlenose whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Pygmy sperm whale, WNA <sup>1</sup> Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA <sup>1</sup>
<b>TRAP/POT FISHERIES:</b>		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Fin whale, WNA Harbor seal, WNA Humpback whale, WNA <sup>1</sup> Minke whale, Canadian east coast <sup>1</sup> North Atlantic right whale, WNA <sup>1</sup>
<b>Category II</b>		
<b>GILLNET FISHERIES:</b>		
Chesapeake Bay inshore gillnet <sup>2</sup>	45	None documented
Gulf of Mexico gillnet <sup>2</sup>	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal <sup>1</sup>
Northeast anchored float gillnet <sup>2</sup>	133	Harbor seal, WNA Humpback whale, WNA White-sided dolphin, WNA
Northeast drift gillnet <sup>2</sup>	unknown	None documented
Southeast Atlantic gillnet <sup>2</sup>	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	30	Atlantic spotted dolphin, WNA Bottlenose dolphin, WNA coastal <sup>1</sup> North Atlantic right whale, WNA
<b>TRAWL FISHERIES:</b>		
Mid-Atlantic mid-water trawl (including pair trawl)	620	Bottlenose dolphin, WNA offshore Common dolphin, WNA Long-finned pilot whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA <sup>1</sup>
Mid-Atlantic bottom trawl	>1,000	Common dolphin, WNA <sup>1</sup> Long-finned pilot whale, WNA <sup>1</sup> Short-finned pilot whale, WNA <sup>1</sup>
Mid-Atlantic flynet <sup>2</sup>	21	None documented

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Northeast mid-water trawl (including pair trawl)	17	Harbor seal, WNA Long-finned pilot whale, WNA <sup>1</sup> Short-finned pilot whale, WNA <sup>1</sup> White-sided dolphin, WNA
Northeast bottom trawl	1,052	Common dolphin, WNA Harbor porpoise, GME/BF Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA <sup>1</sup>
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal <sup>1</sup> West Indian manatee, FL <sup>1</sup>
Atlantic mixed species trap/pot <sup>2</sup>	unknown	Fin whale, WNA Humpback whale, Gulf of Maine
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal <sup>1</sup> Bottlenose dolphin, Western GMX coastal
Mid-Atlantic menhaden purse seine <sup>2</sup>	22	Bottlenose dolphin, WNA coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal <sup>1</sup>
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal <sup>1</sup>
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal <sup>1</sup>
POUND NET FISHERIES:		
Virginia pound net	187	Bottlenose dolphin, WNA coastal <sup>1</sup>
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Delaware River inshore gillnet	60	None documented
Long Island Sound inshore gillnet	20	None documented
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet	32	None documented
Southeast Atlantic inshore gillnet	unknown	None documented
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	972	None documented
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX outer continental shelf Bottlenose dolphin, Northern GMX continental shelf edge and slope
Gulf of Mexico mixed species trawl	20	None documented

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian Manatee, FL
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
U.S. Atlantic tuna purse seine	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
U.S. Mid-Atlantic hand seine	>250	None documented
LONGLINE/HOOK-AND-LINE FISHERIES:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	46	None documented
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	Humpback whale, WNA
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	<125	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented
U.S. Mid-Atlantic eel trap/pot	>700	None documented
STOP SEINE/WEIR/POUND NET FISHERIES:		

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	Gray seal, Northwest North Atlantic Harbor porpoise, GME/BF Harbor seal, WNA Minke whale, Canadian east coast White-sided dolphin, WNA
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the North Carolina roe mullet stop net)	751	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel	4,000	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, WNA coastal

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

### Classification

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

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA, obtain an Authorization Certificate, and pay a fee of \$25 (with the exception of those

in regions with a registration process integrated with existing state and Federal permitting processes). Additionally, fishers may be subject to a Take Reduction Plan (TRP) and requested to carry an observer. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. NMFS has estimated that approximately 42,000 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register. However, registration has been integrated with existing state or Federal

registration programs for the majority of these fisheries so these fishers do not need to register separately under the MMPA. Currently, less than 360 fishers register directly with NMFS under the MMPA authorization program.

Though this final rule will affect approximately 360 small entities, the \$25 registration fee, with respect to anticipated revenues, is not considered a significant economic impact. If a vessel is requested to carry an observer, fishers will not incur any economic costs associated with carrying that observer. As a result of this certification,

an initial regulatory flexibility analysis was not prepared. In the event that reclassification of a fishery to Category I or II results in a TRP, economic analyses of the effects of that plan will be summarized in subsequent rulemaking actions.

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

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

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

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA in June 1995. NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 EA and the 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This final rule would not make any significant change in the management of reclassified fisheries, and therefore, this final rule is not expected to change the analysis or conclusion of the 2005 EA. If NMFS takes a management action, for example, through the development of a TRP, NMFS will first prepare an environmental document, as required under NEPA, specific to that action.

This final rule will not affect species listed as threatened or endangered

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

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

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

## References

- Angliss, R.P., and D.P. DeMaster. 1998. Differentiating Serious and Non-serious Injury of Marine Mammals Taken Incidental to Commercial Fishing Operations: Report of the Serious Injury Workshop 1–2 April 1997, Silver Spring, Maryland. NOAA Technical Memorandum NMFS-OPR-13.  
 Chivers, S. J., Baird, R.W., McSweeney, D.J., Webster, D., Hedrick, N.M. and Salinas, J.C. 2006. Genetic variation and evidence for population structure in eastern North Pacific false killer whales (*Pseudorca crassidens*). Submitted- Canadian Journal of Zoology.

Dated: March 22, 2007.

**Samuel D. Rauch III,**  
*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. E7-5709 Filed 3-27-07; 8:45 am]

**BILLING CODE 3510-22-S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 032107B]

### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason retention limit adjustment.

**SUMMARY:** NMFS has determined that the daily Highly Migratory Species (HMS) Angling category retention limits for Atlantic bluefin tuna (BFT) should be adjusted to maximize the usefulness of the information obtained from catches for biological sampling. Vessels permitted in the HMS Angling and HMS Charter/Headboat categories are eligible to land BFT under the HMS Angling category quota. Therefore, NMFS adjusts the daily BFT retention limits for the HMS Angling category quota to allow landing of school BFT in North Carolina during the three-week period from March 24, 2007, through April 15, 2007, as specified in the **SUPPLEMENTARY INFORMATION** section of this document. This action is intended to provide scientific data that would enhance future recreational fishing opportunities for the HMS Angling and HMS Charter/ Headboat categories, while minimizing the risk of an overharvest of the HMS Angling category BFT quota.

**DATES:** Effective from 12:01 a.m., March 24, 2007, through 11:59 p.m., April 15, 2007.

**FOR FURTHER INFORMATION CONTACT:** Dianne Stephan, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

The 2006 BFT fishing year began on June 1, 2006, and ends May 31, 2007. The final initial 2006 BFT specifications and effort controls were published on May 30, 2006 (71 FR 30619). These final specifications established retention limits for school BFT (measuring 27 inches (69 cm) to less than 47 inches (119 cm)) for the HMS Angling and HMS Charter/Headboat categories in accordance with the following: (1) International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendation limiting the U.S. catch of school BFT to no more than 8 percent of total U.S. domestic landings calculated as a four-year average; (2) the Consolidated HMS Fishery Management Plan (FMP) (October 2, 2006, 71 FR 58058); and (3) the HMS FMP implementing regulations at 50 CFR 635.27.