

December 10, 2007 until 9 p.m. on Friday, December 14, 2007.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 500 Poydras Street, New Orleans, Louisiana 70130-3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 671-2128. The Bridge Administration Branch maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Kay Wade, Bridge Administration Branch, telephone (504) 671-2128.

**SUPPLEMENTARY INFORMATION:** The Texas Department of Transportation has requested a temporary deviation in order to repair sections of the steel truss members of the SR 82 swing span bridge across the Sabine Lake at Port Arthur, Jefferson County, Texas. Repair of the steel truss members is necessary for continued operation of the swing span of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 5 a.m. on Monday, December 3, 2007 until 12 p.m. on Friday, December 7, 2007 and from 5 a.m. on Monday, December 10, 2007 until 9 p.m. on Friday, December 14, 2007. During the closure period, the draw may be able to open during the scheduled maintenance period if at least 2 hours' advance notice is given. Currently, the draw opens on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal, if at least 6 hours' notice is given to the Maintenance Supervisor at the Port Arthur Area Office. The draw opens on signal at any time for an emergency aboard a vessel.

The bridge is a swing span bridge with an available vertical navigational clearance of 9 feet above high water in the closed-to-navigation position. Navigation on the waterway consists primarily of recreational craft, although the bridge is occasionally transited by small tugs with tows transporting sand, gravel and marine shells. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels. An alternate route is available via the Sabine Neches Waterway, which is comprised of the Sabine Pass Channel, Port Arthur Channel and Sabine Neches Canal, thence passage into the lake from the north side.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the

end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 19, 2007.

**David M. Frank,**

*Bridge Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 070417093-7582-02]

RIN 0648-AV54

#### List of Fisheries for 2008

**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 2008, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2008 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 January 1, 2008.

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

Written comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this final rule, should be submitted in writing to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or to David Rostker, Office of Management and Budget (OMB), by fax to 202-395-7285 or by email to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Melissa Andersen, Office of Protected Resources, 301-713-2322; David

Gouveia, Northeast Region, 978-281-9280; 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/>, 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 Marine Mammal Stock Assessment Reports (SAR) 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 proposed 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 fishery 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 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 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 Does NMFS 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 with the 2005 SARs, each SAR includes an appendix with detailed descriptions of each Category I and II fishery in the LOF. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because under the MMPA 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 interactions with marine mammals. 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 NMFS National Observer Program's website: <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.

#### **Are High Seas Fisheries Included in the LOF?**

High seas fisheries in which U.S. persons or vessels participate are not included in the LOF. However, NMFS is considering the inclusion of U.S.-authorized high seas fisheries (fisheries operating beyond 200 nmi of U.S. coasts) in future LOFs. At this time,

NMFS is gathering available information on the number of vessels permitted and/or actively fishing in U.S.-authorized high seas fisheries, gear types used, and marine mammal-fishery interactions data included in documents published under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and MMPA, and from relevant Regional Fishery Management Organizations (RFMO) and the International Whaling Commission (IWC).

#### **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 MMAP registration process with existing state and Federal fishery license, registration, or permit systems. Participants in these fisheries are automatically registered under the MMAP 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. 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 HI Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set line Fishery.

#### **How Do I Receive My Authorization Certificate and Injury/Mortality Reporting Forms?**

All vessel or gear owners will receive their authorization certificates and/or injury/mortality reporting forms via U.S. mail upon registration, except those vessel owners participating in the Northeast and Southeast Regional Integrated Registration Program. Vessel or gear owners participating in the Northeast and Southeast Regional Integrated Registration Program will receive their authorization certificates as follows:

1. Northeast Region vessel or gear owners participating in Category I or II fisheries for which a state or Federal permit is required may receive their authorization certificate and/or injury/mortality reporting form by contacting the Northeast Regional Office at 978-281-9328 or by visiting the Northeast Regional Office Web site ([http://www.nero.noaa.gov/prot\\_res/](http://www.nero.noaa.gov/prot_res/)) and following instructions for printing the necessary documents.
2. Southeast Region vessel or gear owners participating in Category I or II 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 may receive their authorization certificate and/or injury/mortality reporting form

by contacting the Southeast Regional Office at 727-824-5312 or by visiting the Southeast Regional Office Web site (<http://sero.nmfs.noaa.gov/pr/pr.htm>) and following instructions for printing the necessary documents.

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

Vessel or gear owners that participate in Pacific Islands or Alaska regional fisheries are automatically renewed and should receive an authorization certificate by January 1 of each new year. Vessel or gear owners in Washington and Oregon fisheries receive authorization with each renewed state fishing license, the timing of which varies based on target species. Vessel or gear owners who participate in Pacific Islands, Alaska, Washington, or Oregon fisheries and have not received authorization certificates by January 1 or with renewed fishing licenses must contact the appropriate NMFS Regional Office (see **ADDRESSES**).

Vessel or gear owners in Southeast or Northeast regional fisheries may receive their authorization certificates by calling the relevant NMFS Regional Office or visiting the relevant NMFS Regional Office Web site (see How Do I Receive My Authorization Certificate and Injury/Mortality Reporting Forms).

Vessel or gear owners that participate in Southwest regional fisheries, which do not have an integrated registration program, and have previously registered in a Category I or II fishery will receive a renewal packet from the NMFS Southwest 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 NMFS Southwest Regional Office at least 30 days in advance of fishing. Individuals who have not received a renewal packet by January 1 must request a registration form from the NMFS Southwest 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 reporting 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 regulations can be found at 50 CFR 229.30–35.

#### **Sources of Information Reviewed for the Final 2008 LOF**

NMFS reviewed the marine mammal incidental mortality and serious injury 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 mortality and serious injury 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 final LOF for 2008 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), the final SARs for 2006 (72 FR 12774, March 19, 2007), and the draft SARs for 2007 (72 FR 35428, June 28, 2007). All the SARs are available at: <http://www.nmfs.noaa.gov/pr/sars/>.

#### **Fishery Descriptions**

Below, NMFS briefly describes each Category I and II fishery in the final LOF for 2008. While detailed information describing each fishery in the LOF is included in the SARs, within a Fishery Management Plan (FMP) or Take Reduction Plan (TRP), or by state agencies, general descriptive information is important to include in the LOF for improved clarity. Fisheries are defined based on the gear and fishing methods, target species, temporal and spatial distribution, and management and regulatory schemes. NMFS refers readers to the SARs for more additional information on Category I and II fisheries.

Abbreviations used in the following descriptions include: AK (Alaska), AL (Alabama), CA (California), DE (Delaware), FL (Florida), GA (Georgia), HI (Hawaii), LA (Louisiana), MA (Massachusetts), ME (Maine), MS (Mississippi), NC (North Carolina), NJ (New Jersey), NY (New York), OR (Oregon), RI (Rhode Island), SC (South Carolina), TX (Texas), VA (Virginia), and WA (Washington).

#### *Category I and II Commercial Fisheries in the Pacific Ocean*

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

The Category I HI longline fishery targets swordfish, tuna, billfish, mahi mahi, wahoo, and oceanic sharks. The basic unit of gear is a 30–40 mi (48–64 km) long mainline made of 0.13–0.16 in (3.2–4.0 mm) diameter monofilament line, with 800–1,000 hooks attached to the mainline. Deployment and retrieval of gear must occur at night. Shallow swordfish sets are required to use size 18/0 circle hooks with a 10-degree offset and mackerel bait. Using squid bait is prohibited. For deep sets, all float lines must be at least 20 m (65.6 ft) long with a minimum of 15 branch lines attached to the mainline between any 2 floats, except for basket-style longline gear that may have as few as 10 branch lines. The use of any light emitting device is prohibited and vessels may not land or possess more than 10 swordfish at any time. The fishery operates over a huge geographic range extending north-south from 40° N. lat. to the equator and

east-west from Kure Atoll to as far as 135° W. long. Fishing for swordfish generally occurs north of Hawaii (as much as 2,000 mi (3,219 km) from Honolulu), whereas fishing for tunas occurs primarily around the main Hawaiian Islands and south of the Hawaiian Islands. The fishery operates year-round, with effort generally lower in the third quarter of the year.

The HI longline fishery is managed in part under the FMP for Pelagic Fisheries of the Western Pacific Region. The shallow-set swordfish component has annual fleetwide limits on interactions with leatherback and loggerhead sea turtles, an annual fleetwide limit of 2,120 shallow sets north of the equator per year, and a requirement for operators to annually participate in a protected species workshop and get a valid protected species certification. Also, regulations mandate 100 percent observer coverage in the shallow-set component of the fishery and at least 20 percent observer coverage in the deep-set component.

CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery (≥14 in mesh)

The Category I CA/OR thresher shark/swordfish drift gillnet fishery primarily targets common thresher sharks and swordfish using a 1000-fathom (6,000 ft; 1,829 m) gillnet with stretched mesh size from 18–22 in (46–56 cm) with a 14-in (35.6 cm) minimum. Other species caught include: pelagic thresher, bigeye thresher, shortfin mako, blue shark, albacore, other tunas, and dorado. One end of the net is typically attached to the vessel and is set at dusk and allowed to drift during the night, typically for 12–14 hours. Fishing effort extends from the U.S.-Mexico border north to waters off of OR, with the majority of effort occurring from October to December. OR restricts landings to swordfish only.

This fishery is a limited entry fishery managed under the Pacific Highly Migratory Species (HMS) FMP and by regulations under the Pacific Offshore Cetacean Take Reduction Plan (POCTRP), including multiple area-season closures and gear restrictions, a requirement for pingers on drift gillnets, a requirement that extenders (buoy lines) be at least 36 ft (11 m) long, and a requirement for vessel captains to attend skipper education workshops, when notified by NMFS.

CA Angel Shark/Halibut and Other Species Set Gillnet Fishery (>3.5 in mesh)

The Category I CA angel shark/halibut and other species set gillnet fishery targets angel shark and halibut from the

U.S.-Mexico border north to Monterey Bay using 200 fathom (1,200 ft; 366 m) gillnet with a stretch mesh size of 8.5 in (31.6 cm). Net soak duration is typically 8–10, 19–24, or 44–49 hours at a depth ranging from 15–50 fathoms (90–300 ft; 27–91 m) with most sets from 15–35 fathoms (90–210 ft; 27–64 m). No more than 1500 fathoms (9,000 ft; 2,743 m) of gill or trammel net may be fished in combination for CA halibut and angel shark. Fishing occurs year-round, with effort generally increasing during summer months and declining during last the 3 months of the year. The central CA portion of the fishery from Point Arguello to Point Reyes has been closed since September, 2002, following a ban on gillnets inshore of 60 fathoms (360 ft; 110 m). Set gill nets have been prohibited in state waters south of Point Arguello and within 70 fathoms (420 ft; 128 m) or one mile (1.6 km), whichever is less, around the Channel Islands since 1990. The CA Department of Fish and Game (CDFG) manages the fishery as a limited entry fishery with gear restrictions and area closures.

#### CA Yellowtail, Barracuda, and White Seabass Drift Gillnet (mesh size $\geq$ 3.5 in and <14 in) Fishery

The Category II CA yellowtail, barracuda, and white seabass drift gillnet fishery targets primarily yellowtail and white seabass, and secondarily barracuda, with target species typically determined by market demand on a short-term basis. Drift gillnets are up to 6,000 ft (1,829 m) long and are set at the surface. The mesh size depends on target species and is typically 6.0–6.5 in (15–16.5 cm). When targeting yellowtail and barracuda, the mesh size must be  $\geq$ 3.5 in (9 cm); when targeting white seabass, the mesh size must be  $\geq$ 6 in (15.2 cm). From June 16 to March 14 not more than 20 percent, by number, of a load of fish may be white seabass with a total length of 28 in (71 cm). A maximum of ten white seabass per load may be taken, if taken in gillnet or trammel nets with meshes from 3.5–6.0 in (9–15 cm) in length. The fishery operates year-round, primarily south of Point Conception with some effort around San Clemente Island and San Nicolas Island. This fishery is a limited entry fishery with various gear restrictions and area closures managed by the CDFG. Targeting tuna with this type of gear was effectively prohibited in April, 2004, under the Pacific HMS FMP.

#### CA Anchovy, Mackerel, Sardine Purse Seine Fishery

The Category II CA anchovy, mackerel, sardine purse seine fishery

targets wetfish (anchovy, mackerel, and sardine), with the target species primarily driven by availability and market demand. The fishery uses purse seines, drum seines, and lampara nets using standard seining techniques. A typical purse seine net is 185 fathoms (1,110 ft; 338 m) long, 22 fathoms (132 ft; 40 m) deep, and 1,600 meshes deep with each mesh measuring 1.25 in (3 cm). The fishery operates year-round predominantly in southern CA (including the Channel Islands) from San Diego, Oceanside, Dana Point, and San Pedro then north to San Francisco. This fishery is a limited entry fishery, and the mackerel and sardine fisheries are quota fisheries. The fishery is managed in accordance with the Coastal Pelagic Species (CPS) FMP.

#### CA Tuna Purse Seine Fishery

The Category II CA tuna purse seine fishery targets yellowfin, skipjack, and bluefin tuna using purse seine nets similar to those used to target Coastal Pelagic Species (see the description under “CA anchovy, mackerel, sardine purse seine fishery”). The fishery operates from May to October south of Point Conception to the U.S.-Mexico border and in the Southern California Bight. The fishery is managed under the Pacific HMS FMP. This fishery is considered an opportunistic fishery, meaning that fishers only target tuna when certain oceanographic and market conditions exist to make the fishery viable. Effort in the fishery is highly variable, ranging from zero to ten participants annually over the past several years.

#### CA Squid Purse Seine Fishery

The Category II CA squid purse seine fishery targets market squid using several gear types. From 1997–2001, 98 percent of fishermen used purse (77 percent) or drum (21 percent) seine nets. Other types used were lampara, dip, and brail nets. The fishery uses lights (shielded and oriented downward, with a maximum of 30,000 watts) to aggregate spawning squid. The fishery operates year-round with the effort focusing north of Point Conception from April to September and south of Point Conception from October to March. El Nino events cause northern landings to increase, while La Nina events cause southern landings to increase.

The fishery is managed by the CDFG and is monitored under the CPS FMP and the Market Squid FMP. Commercial squid purse seine fishing is prohibited year-round from noon on Friday until noon on Sunday to allow a 2-day consecutive uninterrupted period of spawning. All vessels must be permitted

and comply with a mandatory logbook program for fishing and lighting. Since 2001, a seasonal harvest guideline is set to limit further expansion of the fishery.

#### CA Pelagic Longline Fishery

The Category II CA pelagic longline fishery includes both shallow-set and deep-set gear targeting swordfish and bigeye, albacore, and yellowfin tuna. The fishery operates in waters outside of the U.S. Exclusive Economic Zone (EEZ) because the Pacific HMS FMP prohibits targeting swordfish with longlines within 200 nmi of shore. In 2004, the CA-based shallow-set longline fishery was closed due to anticipated levels of sea turtle interactions. The following is a general description of the shallow-set fishery as it operated prior to 2004 and the current deep-set longline fishery.

Prior to 2004, shallow-set longlines operated year-round primarily targeting swordfish with 15–45 mi (24–72 km) of mainline rigged with 72-ft (22-m) gangions at approximately 197 ft (60 m) intervals. A shallow-set typically has 800–1,300 hooks with large squid or mackerel for bait. Most shallow-set fishing takes place at night when swordfish are at the surface, using various colored lightsticks. A shallow-set mainline is deployed for 4–7 hours and left to drift unattached for 7–10 hours. At this time there is no CA-based shallow-set longline fishing due to anticipated levels of sea turtle interactions.

Deep-set longlines operate year-round primarily targeting tuna with 4–46.6 mi (7–75 km) mainline rigged with 25.6–36 ft (7.8–10.9 m) gangions with 15–16 branchlines set between floats. Deep-set longlines are set at dawn with an average 12 hour soak time. The deep-set sag of the mainline is between 328–1,050 ft (100–320 m) below the water's surface. A deep-set typically contains 270–1,900 hooks with double weighted leaders and sardine for bait. Deep-sets use a variety of hooks including size 38 tuna hooks, size 9 J-hooks, and size 16/0 circle hooks. A small scale deep-set longline fishery began in January 2005 and continues currently. One hundred percent observer coverage is required in the deep-set longline fishery.

#### WA Puget Sound Regional Salmon Drift Gillnet

The Category II WA Puget Sound regional salmon drift gillnet fishery targets coho, pink, sockeye, chinook, and chum salmon in inland marine waters (state waters) south of the U.S.-Canada border and east of the Bonilla-Tatoosh line at the entrance to the Strait of Juan de Fuca. Drift gillnet gear consists of single web construction, not

exceeding 300 fathoms (1,800; 549 m) in length, attached at one end of the vessel. The minimum mesh size varies from 5–7 in (13–18 cm) depending on the target species. While the depths fished vary, fishermen strive to keep the net off of the bottom. The drift times vary depending on the fishing area, tidal condition, and catch. This fishery is a limited entry fishery with seasonal openings, area closures, and gear restrictions. Regulations governing incidental take of marine mammals do not apply to tribal members exercising fishing treaty rights within this fishery.

#### AK Prince William Sound Salmon Drift Gillnet Fishery

The Category II AK Prince William Sound salmon drift gillnet fishery targets salmon using drift gillnet gear with soak times of 15 minutes to 3 hours. The gear is set both during the day and night, with 10–14 sets per day. The fishery operates from mid-May to the end of September in the Prince William Sound Fisheries Management Area, the Copper River, and the Bering Sea. The Prince William Sound Fisheries Management Area consists of 11 districts with six hatcheries contributing to the salmon fisheries. This drift gillnet fishery is managed by the AK Department of Fish and Game (ADFG) as a limited entry fishery with gear restrictions (mesh and net size) and area closures.

#### AK Peninsula/Aleutian Islands Salmon Drift Gillnet Fishery

The Category II AK Peninsula/Aleutian Islands salmon drift gillnet fishery targets salmon using drift gillnet gear with soak times of 2–5 hours. The gear is set during the day and night, with 3–8 sets per day. The fishery operates from mid-June to mid-September in two districts north of the AK Peninsula (Northern and Northwestern), and four districts south of the AK Peninsula (Unimake, Southwestern, Southcentral, and Southeastern). This drift gillnet fishery is managed by ADFG as a limited entry fishery with gear restrictions (mesh and net size) and area closures.

#### AK Peninsula/Aleutian Islands Salmon Set Gillnet Fishery

The Category II AK Peninsula/Aleutian Islands salmon set gillnet fishery targets salmon using set gillnet with the gear set every 2 hours during the day and night. The gear is set with continuous soak times during the opener. Salmon may only be fished commercially during periods known as openers established by ADFG in-season.

During some periods of the season fishing may be continuous with openers lasting days or even many weeks at a time. The ADFG posts weekly notices of fishing openers and announces the openers on regular radio channels a few days or a few hours before each opener. Fishing periods are often extended by Emergency Order during the last 24 hours of the opener.

This fishery generally operates from June 18 to mid-August in two districts north of the AK Peninsula (Northern and Northwestern), and four districts south of the AK Peninsula (Unimake, Southwestern, Southcentral, and Southeastern). Set gillnet fishing effort also occurs off Atka and Amelia Islands. This set gillnet fishery is managed by ADFG as a limited entry fishery with gear restrictions (mesh and net size) and area closures.

#### AK Southeast Salmon Drift Gillnet Fishery

The Category II AK Southeast salmon drift gillnet fishery targets salmon using drift gillnet gear with soak times of 20 minutes to 3 hours. The gear is set during the day and night, with 6–20 sets set per day. This fishery generally operates from June 18 to early October in five main fishing areas off Southeast AK, as well as at Annette Island, in Terminal Harvest Areas (THA) adjacent to hatchery facilities, and for hatchery cost recovery. The majority of salmon are caught by drift gillnets in the five main fishing areas (81 percent in 2003) and the THAs (13 percent in 2003), with small contributions from Annette Island (4 percent in 2003), and for hatchery cost recovery (1.8 percent in 2003). This drift gillnet fishery is managed by ADFG as a limited entry fishery, with gear restrictions (mesh and net size) and area closures.

#### AK Cook Inlet Salmon Drift Gillnet Fishery

The Category II AK Cook Inlet salmon drift gillnet fishery targets salmon using drift gillnet gear with soak times of 15 minutes to 3 hours, or continuously. The gear is set during the day, with 6–18 sets per day. This fishery generally operates from June 25 to end of August in the Central District of the Upper Cook Inlet. Drift gillnet fishing effort for sockeye salmon peaks in mid to late July. Currently, drift gillnet fishing for salmon in the Cook Inlet occurs in the Central District area only for the two regular 12-hour openers on Mondays and Thursdays. This drift gillnet fishery is managed by ADFG as a limited entry fishery with gear restrictions (mesh and net size) and area closures.

#### AK Cook Inlet Salmon Set Gillnet Fishery

The Category II AK Cook Inlet salmon set gillnet fishery targets salmon using set gillnet gear with continuous soak times during the opener. Fishing effort occurs during the day and night in the Upper Cook Inlet; while fishing effort occurs only during the day in the Lower Cook Inlet, except during fishery extensions. In the Upper Cook Inlet, the catch is picked from the net (i.e., the net is tended) each day during a slack tide; while the catch is picked from the net every 2–6 hours in the Lower Cook Inlet. The net becomes dry with low tide. The fishery generally operates from June 2 to mid-September in Cook Inlet. This set gillnet fishery is managed by ADFG as a limited entry fishery with gear restrictions (mesh and net size) and area closures.

#### AK Yakutat Salmon Set Gillnet Fishery

The Category II AK Yakutat salmon set gillnet fishery targets salmon using set gillnet gear with continuous soak times during the opener, during the day and night. The catch is picked from the net every 2–4 hours each day or continuously during peak fishing times. The fishery generally operates from June 4 to the end of August. The Yakutat salmon set gillnet fishery consists of multiple set gillnet fisheries occurring in two fishing districts, the Yakutat District and the Yakataga District. As many as 25 different areas in the Yakutat and Yakataga Districts are open to commercial fishing each year. The Yakutat District fisheries primarily target sockeye and coho salmon, although all species of salmon are harvested. The Yakataga District fisheries target coho salmon. With a few exceptions, set gillnetting is confined to the intertidal area inside the mouths of rivers and streams, and to the ocean waters immediately adjacent to each. Due to the terminal nature of these fisheries, ADFG has been able to develop salmon escapement goals for most of the major, and several of the minor, fisheries. This set gillnet fishery is managed by ADFG as a limited entry fishery with gear restrictions (mesh and net size) and area closures.

#### AK Kodiak Salmon Set Gillnet Fishery

The Category II AK Kodiak salmon set gillnet fishery targets salmon using set gillnet gear with continuous soak times during the opener. Fishing effort occurs during the day, with the catch picked from the net 2 or more times each day. The majority of set gillnets are attached to a shore lead up to 80 fathoms (480 ft; 146 m) long in a straight line to a king

buoy offshore, with numerous anchor lines and buoys holding the net in place. The last 25 fathoms (150 ft; 46 m) of the gillnet is usually formed into a fish trap, also called a hook. The fishery generally operates from June 9 to the end of September or early October. Many areas are open until early October, but most fishermen remove the nets by early September. As the runs progress in late July and change from sockeye to pink salmon, the ADFG often reduces the length of openers if escapement goals have not been met. Fishing effort begins to reduce in mid to late August as salmon runs begin to decline.

This fishery consists of 2 Districts, the Northwest District from Spruce Island to the south side of Uyak Bay, and the Alitak Bay District located on the southwestern corner of Kodiak Island. In most years, the Northwest District is fished by approximately 100 permit holders and constitutes approximately 70 percent of the annual fishing effort, while the Alitak Bay District is fished by approximately 70 permit holders and constitutes approximately 30 percent of the annual fishing effort. Traditionally, the Northwest District is open for the majority of June and July, while effort in the Alitak Bay District typically occurs 5 to 7 days out of every 10 days during the fishing season. This set gillnet fishery is managed by ADFG as a limited entry fishery with gear restrictions (mesh and net size) and area closures.

#### AK Bristol Bay Salmon Drift Gillnet Fishery

The Category II AK Bristol Bay salmon drift gillnet fishery targets salmon using drift gillnet gear with continuous soak times for part of the net, while other parts of the net are tended. Fishing effort occurs during the day and night, with a continuous number of sets per day. This fishery generally operates from June 17 to the end of August in Bristol Bay. Approximately 80 percent of the salmon catch in Bristol Bay is caught with drift gillnets. The Bristol Bay management area consists of five management districts including all coastal and inland waters from Cape Newenham to Cape Mensehikof. There are eight major river systems in the area, and these form the largest commercial sockeye salmon fishery in the world. Although sockeye salmon is the most abundant salmon species that returns to Bristol Bay each year, chinook, chum, coho, and pink salmon returns are also important to the fishery. This drift gillnet fishery is managed by ADFG as a limited entry fishery with gear restrictions (mesh and net size) and area closures.

#### AK Bristol Bay Salmon Set Gillnet Fishery

The Category II AK Bristol Bay salmon set gillnet fishery targets salmon using set gillnet gear with continuous soak times during the opener, but the net is dry during low tide. Fishing effort occurs during the day and night, with 2 or more continuous sets per day. This fishery generally operates from June 17 to the end of August or mid-September in the same areas in Bristol Bay as the AK Bristol Bay salmon drift gillnet fishery discussed above. Approximately 20 percent of the salmon catch in Bristol Bay is caught with set gillnets. This set gillnet fishery is managed by ADFG as a limited entry fishery with gear restrictions (mesh and net size) and area closures.

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

The Category II AK Metlakatla/Annette Island salmon drift gillnet fishery targets salmon using drift gillnet gear off Annette Island in Southeast AK. This drift gillnet fishery is an exclusively tribal fishery. The fishery is a limited entry fishery with gear restrictions (mesh and net size) and area closures. This fishery, as a tribal fishery, is separate from the AK Southeast drift gillnet fishery only for regulation purposes. The fisheries are considered the same for LOF categorization purposes.

#### AK Southeast Salmon Purse Seine Fishery

The Category II AK Southeast salmon purse seine fishery targets salmon using purse seine gear with soak times of 20–45 minutes. Fishing effort occurs mostly in daylight hours, except at the peak of the season, with 6–20 sets per day. The fishery generally operates from the end of June to September. In 2003, purse seine fishing ran through November 12 in THAs. Regulations allow purse seine fishing to occur in certain fishing districts, and also in certain THAs, hatchery cost recovery areas, and the Annette Island Fishery Reserve. This purse seine fishery accounts for approximately 80 percent of the total salmon harvest in Southeast AK, and approximately 87 percent of the fish caught are pink salmon. This purse seine fishery is managed by ADFG as a limited entry fishery with gear restrictions (mesh and net size) and area closures.

#### AK Cook Inlet Salmon Purse Seine Fishery

The Category II AK Cook Inlet salmon purse seine fishery targets salmon using purse seine gear in Cook Inlet from June

1 to October 31. Purse seines must be between 90 fathoms (540 ft; 165 m) and 250 fathoms (1,500 ft; 457 m) long, and 100 meshes and 325 meshes deep. Detachable or loose leads are not permitted. In Cook Inlet, purse seines may be used in the Southern District, Kamishak Bay District, Outer District, Eastern District, and Chinitna Bay Subdistrict east of a line from the crane on the south shore to the largest boulder on the landward end of Glacier Spit. This purse seine fishery is managed by ADFG as a limited entry fishery with gear restrictions (mesh and net size) and area closures.

#### AK Kodiak Salmon Purse Seine Fishery

The Category II AK Kodiak salmon purse seine fishery targets salmon using purse seine gear from June 1 to October 31, with fishing periods open by regulation and emergency orders. Purse seine gear must have a mesh size of less than 7 in (18 cm). Purse seine gear must be between 100 fathoms (600 ft; 183 m) and 200 fathoms (1,200 ft; 366 m) long, and between 100 meshes and 325 meshes deep. At least 50 fathoms (300 ft; 91 m) of a purse seine must be 150 meshes in depth. One lead, no more than 100 fathoms (600 ft; 183 m) in length, may be used with each purse seine. The aggregate length of a seine and lead may not exceed 250 fathoms (1,500 ft; 457 m). Leads must be removed from the water within two hours after a season or fishing period closure. Overlapping panels of net web may not be used in seine leads.

This fishery occurs in the Kodiak Area, including all waters of AK south of Cape Douglas (58° 51.10' N. lat.), west of 150° W. long., north of 55° 30' N. lat., and north and east of the southern entrance of Imuya Bay. This purse seine fishery is managed by ADFG as a limited entry fishery with gear restrictions (mesh and net size) and area closures.

#### AK Bering Sea and Aleutian Islands (BSAI) Flatfish Trawl Fishery

The Category II AK BSAI flatfish trawl fishery targets flatfish using trawl gear in the U.S. EEZ of the eastern Bering Sea and the portion of the North Pacific Ocean adjacent to the Aleutian Islands, which is west of 170° W. long. up to the U.S.-Russian Convention Line of 1867. Management measures for the BSAI groundfish fisheries constrain fishing both temporally and spatially. This fishery is federally managed under the BSAI FMP. The authorized gear, fishing season, criteria for determining fishing seasons, and area restrictions by gear type are defined in the regulations



implementing the BSAI FMP (50 CFR part 679).

#### AK Bering Sea and Aleutian Islands (BSAI) Pollock Trawl Fishery

The Category II AK BSAI pollock trawl fishery targets flatfish using trawl gear in the same location as the AK BSAI flatfish trawl fishery described above. The use of non-pelagic trawl gear in the directed fishery for pollock is prohibited. This fishery is federally managed under the BSAI FMP. Management measures for the BSAI groundfish fisheries constrain fishing both temporally and spatially. The gear authorized, fishing year, criteria for determining fishing seasons, and area restrictions by gear type are defined in the regulations implementing the BSAI FMP (50 CFR part 679).

#### AK Bering Sea and Aleutian Islands (BSAI) Pacific Cod Longline Fishery

The Category II AK BSAI Pacific cod longline fishery targets Pacific cod using longline gear in the same location as the AK BSAI flatfish trawl fishery described above. This fishery is federally managed under the BSAI FMP. Management measures for the BSAI groundfish fisheries constrain fishing both temporally and spatially. The gear authorized, fishing year, criteria for determining fishing seasons, and area restrictions by gear type are defined in the regulations implementing the BSAI FMP (50 CFR part 679).

#### AK Bering Sea Sablefish Pot Fishery

The Category II AK Bering Sea sablefish pot fishery targets sablefish using pot gear in the same location as the AK BSAI flatfish trawl fishery described above. This fishery is Federally managed under the BSAI FMP and is operated under Individual Fishing Quotas. Management measures for the BSAI groundfish fisheries constrain fishing both temporally and spatially. The gear authorized, fishing year, criteria for determining fishing seasons, and area restrictions by gear type are defined in the regulations implementing the BSAI FMP (50 CFR part 679).

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

##### Northeast Sink Gillnet Fishery

The Category I Northeast sink gillnet fishery targets Atlantic cod, haddock, pollock, yellowtail flounder, winter flounder, witch flounder, American plaice, windowpane flounder, spiny dogfish, monkfish, silver hake, red hake, white hake, ocean pout, skate spp, mackerel, redfish, and shad. This

fishery uses sink gillnet gear, which is anchored gillnet (bottom-tending net) fished in the lower one-third of the water column. The dominant material is monofilament twine with stretched mesh sizes from 6–12 in (15–30.5 cm) and string lengths from 600–10,500 ft (183–3,200 m), depending on the target species. The fishery operates from the U.S.-Canada border to Long Island, NY, at 72° 30' W. long. south to 36° 33.03' N. lat. (corresponding with the VA/NC border) and east to the eastern edge of the EEZ, including the Gulf of Maine, Georges Bank, and Southern New England, and excluding Long Island Sound or other waters where gillnet fisheries are listed as Category III. At this time, these Category II and II fisheries include: the Northeast anchored float gillnet; Northeast drift gillnet; Long Island Sound inshore gillnet; and RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet. Fishing effort occurs year-round, peaking from May to July primarily on continental shelf regions in depths from 30–750 ft (9–228.6 m), with some nets deeper than 800 ft (244 m).

This fishery is managed by the Northeast Multispecies (Groundfish) FMP and the Monkfish FMP. This fishery is also managed by the Atlantic Large Whale Take Reduction Plan (ALWTRP) and the Harbor Porpoise Take Reduction Plan (HPTRP) to reduce the risk of entanglement of right, humpback, and fin whales, and harbor porpoises, respectively. The fishery is primarily managed by Total Allowable Catch (TAC) limits; individual trip limits (quotas); effort caps (limited number of days at sea per vessel); time and area closures; and gear restrictions.

##### Mid-Atlantic Gillnet Fishery

The Category I Mid-Atlantic gillnet fishery targets monkfish, spiny dogfish, smooth dogfish, bluefish, weakfish, menhaden, spot, croaker, striped bass, large and small coastal sharks, Spanish mackerel, king mackerel, American shad, black drum, skate spp., yellow perch, white perch, herring, scup, kingfish, spotted seatrout, and butterfish. The fishery uses drift and sink gillnets, including nets set in a sink, stab, set, strike, or drift fashion, with some unanchored drift or sink nets used to target specific species. The dominant material is monofilament twine with stretched mesh sizes from 2.5–12 in (6.4–30.5 cm), and string lengths from 150–8,400 ft. (46–2,560 m). This fishery operates year-round 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

NC/SC border, not including waters where Category II and Category III inshore gillnet fisheries operate in bays, estuaries, and rivers. At this time, these Category II and Category III fisheries include: the Chesapeake Bay inshore gillnet; NC inshore gillnet; DE River inshore gillnet; Long Island Sound inshore gillnet; and RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet. This fishery includes any residual large pelagic driftnet effort in the mid-Atlantic and any shark and dogfish gillnet effort in the mid-Atlantic zone described. The fishing effort is prosecuted right off the beach (6 ft [1.8 m]) or in nearshore coastal waters to offshore waters (250 ft [76 m]).

Gear in this fishery is managed by several Federal FMPs and Inter-State FMPs managed by the Atlantic States Marine Fisheries Commission (ASMFC), the ALWTRP, the HPTRP, and the Bottlenose Dolphin Take Reduction Plan (BDTRP). Fisheries are primarily managed by TACs; individual trip limits (quotas); effort caps (limited number of days at sea per vessel); time and area closures; and gear restrictions and modifications.

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

The Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery targets swordfish, yellowfin tuna, bigeye tuna, bluefin tuna, albacore tuna, dolphin fish, wahoo, shortfin mako shark, and a variety of other shark species. The fishery uses a mainline of >700 lb (317.5 kg) test monofilament typically ranging from 10–45 mi (16–72 km) long. Bullet-shaped floats are suspended at regular intervals along the mainline and long sections of gear are marked by radio beacons. Long gangion lines of 200–400 lb (91–181 kg) test monofilament of typically 100–200 ft (30.5–61 m) are suspended from the mainline. Only certain sized hooks and baits are allowed based on fishing location. Hooks are typically fished at depths between 40–120 ft (12–36.6 m). Longlines targeting tuna are typically set at dawn are hauled near dusk, while longlines targeting swordfish are typically set at night and hauled in the morning. Gear remains in the water typically for 10–14 hours. Fishermen generally modify only select sections of longline gear to target dolphin or wahoo, with the remaining gear configured to target swordfish, tuna, and/or sharks.

This fishery operates year-round and occurs within and outside the U.S. EEZ throughout Atlantic, Caribbean and Gulf



of Mexico waters. The fishery has historically been composed of five relatively distinct segments with different fishing practices and strategies, including: Gulf of Mexico yellowfin tuna fishery; South Atlantic-Florida east coast to Cape Hatteras swordfish fishery; Mid-Atlantic and New England swordfish and bigeye tuna fishery; U.S. distant water swordfish fishery; and Caribbean Islands tuna and swordfish fishery. In addition to geographical area, these segments have historically differed by percentage of various target and non-target species, gear characteristics, and deployment techniques.

This fishery is managed under the Consolidated Atlantic HMS FMP. The dolphin and wahoo portions of the fishery are managed under the South Atlantic FMP for Dolphin and Wahoo. Regulations under the MSA address the target fish species, as well as bycatch species protected under the ESA and/or the MMPA. A portion of this fishery is the subject of the Pelagic Longline Take Reduction Team (PLTRT), convened in 2005. NMFS is currently developing regulations to implement the Take Reduction Plan.

#### Northeast/Mid-Atlantic American Lobster Trap/Pot Fishery

The Category I Northeast/Mid-Atlantic American lobster trap/pot fishery targets American lobster primarily with traps, while 2–3 percent of the target species is taken by mobile gear (trawls and dredges). The fishery operates in inshore and offshore waters from ME to NJ and may extend as far south as Cape Hatteras. Approximately 80 percent of American lobster are harvested from state waters; therefore, the ASMFC has a primary regulatory role. The EEZ portion of the fishery operates under regulations from the Federal American Lobster FMP. Both the EEZ and state fishery are operating under Federal regulations from the ALWTRP.

#### Northeast Anchored Float Gillnet Fishery

The Category II Northeast anchored float gillnet fishery targets mackerel, herring (particularly for bait), shad, and menhaden using gillnet gear of any size anchored and fished in the upper two-thirds of the water column. The fishery operates 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, not including Long Island Sound or other waters where gillnet fisheries are listed as Category III. The fishery is managed under the Interstate FMPs for Atlantic

Menhaden and Shad and is subject to ALWTRP implementing regulations. A total closure of the American shad ocean intercept fishery was fully implemented in January, 2005.

#### Northeast Drift Gillnet Fishery

The Category II Northeast drift gillnet fishery targets species other than large pelagics, including shad, herring, mackerel, and menhaden. This fishery uses drift gillnet gear, which is gillnet gear not anchored to the bottom and is free-floating on both ends or free-floating at one end and attached to the vessel at the other end. Mesh sizes are likely less than those used to target large pelagics. The fishery includes any residual large pelagic driftnet effort in New England and occurs at any depth in the water column 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 fishery is managed under the Interstate FMPs for Atlantic Menhaden and Shad and is subject to ALWTRP implementing regulations. A total closure of the American shad ocean intercept fishery was fully implemented in January, 2005.

#### Chesapeake Bay Inshore Gillnet Fishery

The Category II Chesapeake Bay inshore gillnet fishery targets menhaden and croaker using gillnet gear with mesh sizes ranging from 2.75–5 in (7–12.7 cm), depending on the target species. The fishery operates between the Chesapeake Bay/Bridge Tunnel and the mainland. The fishery is managed under the Interstate FMPs for Atlantic Menhaden and Atlantic Croaker.

#### Northeast Mid-Water Trawl (Including Pair Trawl) Fishery

The Category II Northeast mid-water trawl fishery targets Atlantic herring with bycatch of several finfish species, predominantly mackerel, spiny dogfish, and silver hake. This fishery uses primarily mid-water (pelagic) trawls (single and paired), which is trawl gear designed, capable, or used to fish for pelagic species with no portion designed to be operated in contact with the bottom. The fishery occurs primarily in ME State waters, Jeffrey's Ledge, southern New England, and Georges Bank during the winter months when the target species continues its southerly migration from the Gulf of Maine/Georges Bank, into mid-Atlantic waters. The fishery is managed jointly by the Mid-Atlantic Fishery Management Council and the ASMFC as a migratory stock complex.

#### Mid-Atlantic Flynet Fishery

The Category II Mid-Atlantic flynet fishery is a multispecies fishery composed of nearshore and offshore components that operate along the eastern coast of the Mid-Atlantic United States. Flynets are high profile trawls similar to bottom otter trawls. These nets typically range from 80–120 ft (24–36.6 m) in headrope length, with wing mesh sizes of 16–64 in (41–163 cm), following a slow 3:1 taper to smaller mesh sizes in the body, extension, and codend sections of the net. The nearshore fishery operates from October to April inside of 30 fathoms (180 ft; 55 m) from NC to NJ. This nearshore fishery targets Atlantic croaker, weakfish, butterfish, harvestfish, bluefish, menhaden, striped bass, kingfishes, and other finfish species. Flynet fishing is no longer permitted south of Cape Hatteras in order to protect weakfish stocks. The offshore component operates from November to April outside of 30 fathoms (180 ft; 55 m) from the Hudson Canyon off NY, south to Hatteras Canyon off NC. These deeper water fisheries target bluefish, Atlantic mackerel, *Loligo* squid, black sea bass, and scup (72 FR 7382, February 15, 2007). *Illex* Squid are also targeted offshore (70–200 fathoms [420–1,200 ft; 128–366 m]) during summer months from May to September.

#### Northeast Bottom Trawl Fishery

The Category II Northeast bottom trawl fishery uses bottom trawl gear to target species included in the NE Multispecies FMP, Summer Flounder FMP, and Scup and Seabass FMP, including, but not limited to: Atlantic cod, haddock, pollock, yellowtail flounder, winter flounder, witch flounder, American plaice, Atlantic halibut, redfish, windowpane flounder, summer flounder, spiny dogfish, monkfish, silver hake, red hake, white hake, ocean pout, and skate spp. The fishery operates year-round, with a peak from May to July, from the U.S.-Canada border through waters east of 72° 30' W. long., primarily on the continental shelf and throughout the Gulf of Maine, Georges Bank, and Southern New England. The fishery is primarily managed by TACs, individual trip limits (quotas), effort caps (limited number of days at sea per vessel), time and area closures, and gear restrictions.

#### VA Pound Net Fishery

The Category II VA pound net fishery targets weakfish, spot, and croaker using stationary gear in nearshore coastal and estuarine waters off VA. Pound net gear includes a large mesh lead posted

perpendicular to the shoreline and extending outward to the corral, or "heart," where the catch accumulates. This fishery includes all pound net effort in VA State waters, including waters inside the Chesapeake Bay. The fishery is managed under Interstate FMPs for Atlantic Croaker and Spot, and is an affected fishery under the BDTRP.

#### Atlantic Mixed Species Trap/Pot Fishery

The Category II Atlantic mixed species trap/pot fishery's target species include, but are 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, stone crab, American eel, and cunner. The fishery includes all trap/pot operations from the U.S.-Canada border south through the waters east of the fishery management demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105), but does not include the following Category I, II, and III trap/pot fisheries: Northeast/Mid-Atlantic American lobster trap/pot; Atlantic blue crab trap/pot; Florida spiny lobster trap/pot; Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot; U.S. Mid-Atlantic eel trap/pot fisheries; and the Southeastern U.S. Atlantic, Gulf of Mexico golden crab fishery (68 FR 1421, January 10, 2003). The fishery is managed under various Interstate FMPs and is subject to ALWTRP implementing regulations.

#### Atlantic Blue Crab Trap/Pot Fishery

The Category II Atlantic blue crab trap/pot fishery targets blue crab using pots baited with fish or poultry typically set in rows in shallow water. The pot position is marked by either a floating or sinking buoy line attached to a surface buoy. The fishery occurs year-round from the south shore of Long Island at 72° 30' W. long. in the Atlantic and east of the fishery management demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105), including state waters. The fishery is managed under state FMPs, and is subject to ALWTRP implementing regulations. It is also an affected fishery under the BDTRP.

#### Mid-Atlantic Bottom Trawl Fishery

The Category II Mid-Atlantic bottom trawl fishery uses bottom trawl gear to target species including, but not limited to, bluefish, croaker, monkfish, summer flounder (fluke), winter flounder, silver hake (whiting), spiny dogfish, smooth dogfish, scup, and black sea bass. The fishery occurs year-round from Cape Cod, MA, to Cape Hatteras, NC, in

waters west of 72° 30' W. long. and north of a line extending due east from the NC/SC border. The gear is managed by several state and Federal FMPs that range from MA to NC.

#### Mid-Atlantic Mid-Water Trawl (Including Pair Trawl) Fishery

The Category II Mid-Atlantic mid-water trawl fishery targets Atlantic mackerel, *Loligo* squid, *Illex* squid, and Atlantic butterflyfish using mainly mid-trawl gear, with some bottom trawls. The fishery is dominated by small-mesh otter trawls, but *Loligo* squid are also taken by inshore pound nets and fish traps in spring and summer. The fishery for *Illex* occurs offshore, mainly in continental shelf and slope waters during summer months (June to September), from southern New England to Cape Hatteras, NC. The fishery for *Loligo* occurs mostly offshore near the edge of the continental shelf during fall and winter months (October to March), and inshore during spring and summer (April to September) in southern New England and mid-Atlantic waters. The fishery for Atlantic mackerel occurs primarily in southern New England and the mid-Atlantic from January to March, and in the Gulf of Maine during summer and fall (May to December). Atlantic butterflyfish are mainly caught as bycatch in the directed squid and mackerel fisheries due to their northerly inshore migration in summer months and southerly offshore migration in winter months. The fishery is managed by the Federal Squid, Mackerel, Butterflyfish FMP. The *Illex* and *Loligo* fisheries are managed by moratorium permits, gear and area restrictions, quotas, and trip limits. The Atlantic mackerel and Atlantic butterflyfish fisheries are managed by an annual quota system.

#### Mid-Atlantic Haul/Beach Seine Fishery

Due to pending rulemakings by the NC Division of Marine Fisheries (NCDMF), particularly pertaining to NC beach gear, NMFS is basing its description of the Category II Mid-Atlantic haul/beach seine fishery on the proposed 2001 LOF (66 FR 6545, January 22, 2001) and components of the proposed 2008 LOF (72 FR 35393, June 28, 2007). NMFS is including components of both definitions that more accurately reflect the current fishery. This includes the following description: The Category II Mid-Atlantic haul/beach seine fishery targets striped bass, mullet, spot, weakfish, sea trout, bluefish, kingfish, and harvestfish using seines with one end secured (e.g., swipe nets and long seines) and seines secured at both ends or those anchored

to the beach and hauled up on the beach. The beach seine system also uses a bunt and a wash net that are attached to the beach and extend into the surf. The fishery occurs in waters west of 72° 30' W. long. and north of a line extending due east from the NC/SC border. The fishery is managed under several state and Interstate FMPs and is an affected fishery under the BDTRP. Further revision to the description of this fishery will appear in a future LOF pending the NCDMF rulemakings.

#### Mid-Atlantic Menhaden Purse Seine Fishery

The Category II Mid-Atlantic menhaden purse seine fishery targets menhaden and thread herring using purse seine gear. Most sets occur within 3 mi (4.8 km) of shore with the majority of the effort occurring off NC from November to January, and moving northward during warmer months to southern New England. The fishery is managed under the Interstate FMP for Atlantic Menhaden.

#### Southeastern U.S. Atlantic Shark Gillnet Fishery

The Category II Southeastern U.S. Atlantic shark gillnet fishery targets large and small coastal sharks (blacktip, blacknose, finetooth, bonnethead, and sharpnose) using gillnets set in a sink, stab, set, strike, or drift fashion. Mesh size is typically greater than 5 in (13 cm), but may be as small as 2.87 in (7.3 cm) when targeting small coastal sharks. Drift gillnets most commonly use a mesh size of 5 in (13 cm) and average 10.2 hours from setting the gear through completion of haulback; sink gillnets most frequently use a mesh size of 7 in (18 cm) soaking for approximately 2.7 hours; and strike gillnets use the largest mesh size of 9 in (23 cm) soaking for approximately 0.8 hours. This fishery has traditionally operated in coastal waters off FL and GA.

This fishery is managed under the Consolidated Atlantic HMS FMP, the ALWTRP, and the BDTRP, and is subject to ESA biological opinion requirements. Regulations implemented under the MSA address managed target species, as well as bycatch species, including some protected under the ESA and MMPA (e.g., sea turtles, smalltooth sawfish, and right whales).

#### Southeast Atlantic Gillnet Fishery

The Category II Southeast Atlantic gillnet fishery targets finfish including, but not limited to, king mackerel, Spanish mackerel, whiting, bluefish, pompano, spot, croaker, little tunny, bonita, jack crevalle, cobia, and striped mullet. This fishery does not include

gillnet effort targeting sharks as part of the "Southeastern U.S. Atlantic shark gillnet" fishery. This fishery uses gillnets set in sink, stab, set, or strike fashion. The fishery operates in waters south of a line extending due east from the NC/SC border and south and east of the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico. The majority of fishing effort occurs in Federal waters since SC, GA, and FL prohibit the use of gillnets, with limited exceptions, in state waters.

Fishing for king mackerel, Spanish mackerel, cobia, cero, and little tunny in Federal waters is managed under the Coastal Migratory Pelagic Resources (CMPR) FMP. None of the other target species are Federally managed under the MSA. In state waters, state and ASMFC Interstate FMPs apply. The fishery is also subject to BDTRP and ALWTRP implementing regulations.

#### NC Inshore Gillnet Fishery

The Category II NC inshore gillnet fishery targets species including, but not limited to, southern flounder, weakfish, bluefish, Atlantic croaker, striped mullet, spotted seatrout, Spanish mackerel, striped bass, spot, red drum, black drum, and shad. This fishery includes any fishing effort using any type of gillnet gear, including set (float and sink), drift, and runaround gillnet for any target species inshore of the COLREGS lines in NC. This fishery is managed under state and ASMFC interstate FMPs, applying net and mesh size regulations, and seasonal area closures in the Pamlico Sound Gillnet Restricted Area (PSGNRA). It is also an affected fishery under the BDTRP.

#### Gulf of Mexico Gillnet Fishery

The Category II Gulf of Mexico gillnet fishery targets a wide variety of target species, including, but not limited to: black drum, sheepshead, weakfish, mullet, spot, croaker, king mackerel, Spanish mackerel, Florida pompano, flounder shark, menhaden, bluefish, blue runner, ladyfish, spotted seatrout, croaker, kingfish, and red drum. This fishery operates year-round using any type of gillnet, including strike and straight gillnets, in waters north of the U.S.-Mexico border and west of the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico. Gillnet gear is prohibited in TX and FL State waters, but fixed and runaround gillnets are currently used in LA, MS, and AL with highly variable fishing effort.

Fishing for king mackerel, Spanish mackerel, cobia, cero, little tunny, dolphin, and bluefish are managed

under the CMPR FMP. In the Gulf of Mexico, CMPR FMP species are the only Federally managed species for which gillnet gear is authorized, and only run-around gillnetting for these species is allowed. In state waters, state and Gulf States Marine Fisheries Commission (GSMFC) Interstate FMPs apply.

#### NC Long Haul Seine Fishery

The Category II NC long haul seine fishery targets species including, but not limited to, weakfish, spot, croaker, menhaden, bluefish, spotted seatrout, and hogfish using multi-filament seines consisting of a 3,000–6,000 ft (914–1,829 m) net pulled by two boats for 1–2 nmi (2–4 km). Fish are encircled and concentrated by pulling the net around a fixed stake. The fishery includes fishing with long haul seine gear to target any species in waters off NC, including estuarine waters in Pamlico and Core Sounds and their tributaries. The fishery occurs from February to November, with peak effort occurring from June to October. The fishery is managed under ASMFC interstate FMPs, and is an affected fishery under the BDTRP.

#### NC Roe Mullet Stop Net Fishery

The Category II NC roe mullet stop net fishery targets striped mullet from October to November using a stationary, multi-filament anchored net extended perpendicular to the beach. Once the catch accumulates near the end of the stop net, a beach haul seine is used to capture fish and bring them ashore. The stop net is traditionally left in the water for 1–5 days, but can be left as long as 15 days. This fishery is unique to Bogue Banks, NC. This fishery is managed under the NC Striped Mullet FMP, and is an affected fishery under the BDTRP.

#### Gulf of Mexico Menhaden Purse Seine Fishery

The Category II Gulf of Mexico menhaden purse seine fishery targets menhaden and thread herring using purse seine gear in bays, sounds, and nearshore coastal waters along the Gulf of Mexico coast. The majority of the fishing effort is concentrated off LS and MS, with lesser effort in AL and TX State waters. FL prohibits the use of purse seines in state waters. The fishery is managed under the GSMFC Interstate Gulf Menhaden FMP.

#### Comments and Responses

NMFS received 10 comment letters and 1 comment via phone on the proposed 2008 LOF (72 FR 35393, June 28, 2007) from the Marine Mammal Commission, Hawaii Longline Association, Western Pacific Regional

Fishery Management Council, Mid-Atlantic Fishery Management Council, Pacific Fishery Management Council's Groundfish Management Team, Gulf States Marine Fisheries Commission, Center for Biological Diversity, 2 representatives of the commercial fishing industry, and 2 representatives of Federal agencies. Comments on issues outside the scope of the LOF were noted, but are not responded to in this final rule.

#### General Comments

*Comment 1:* Two commenters commended NMFS for describing all Category I and II fisheries within the proposed 2008 LOF. While additional description materials are available elsewhere, one commenter believes these descriptions provide important context for readers attempting to evaluate the LOF. One commenter recommended NMFS describe all Category III fisheries in future LOFs.

*Response:* NMFS will consider describing Category III fisheries in future LOFs.

*Comment 2:* Two commenters commended NMFS for publishing the proposed 2008 LOF early enough to allow for ample time to review and comment on the rule, as well as to publish a final 2008 LOF before the beginning of the 2008 calendar year.

*Response:* NMFS will make every effort to publish future proposed LOFs by July of each year, to allow sufficient time for review and comment by organizations and individuals. This will also allow NMFS to publish the final LOF in time for the rule to become effective by January 1 of the respective calendar year.

*Comment 3:* One commenter commended NMFS for its support of depredation studies, as outlined in response to comments in the final 2007 LOF (72 FR 14466, March 28, 2007). The commenter encourages NMFS to continue and enhance its efforts to evaluate and address this developing issue.

*Response:* NMFS will continue to develop, conduct, and support research efforts on depredation-related interactions between marine mammals and fisheries as funding is available. See the response to Comment 1 in the final 2007 LOF (72 FR 14466, March 28, 2007) for details on research conducted in the past and research currently being conducted.

*Comment 4:* One commenter reiterated previous letters on the 2005, 2006, and 2007 LOFs calling for the inclusion of observer coverage on the LOF. The Service indicated in its response to comments on the final 2007

LOF that it would “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 [lists].” However, information on observer coverage is not provided in the justification for reclassifying the “CA yellowtail, barracuda, and white seabass drift gillnet” fishery in the proposed 2008 LOF. Further, the commenter also believes observer information is important for justifying the status quo. Without such information, it is not possible to determine whether a given fishery was adequately observed and no marine mammals were taken or the fishery was not adequately observed and mortality and serious injury may have occurred, but were not documented.

*Response:* Please see responses to Comment 6 in the final 2005 LOF (71 FR 250, January 4, 2006), Comment 4 in the final 2006 LOF (71 FR 48802, August 22, 2006), and Comment 8 in the final 2007 LOF (72 FR 14466, March 28, 2007). NMFS still feels that it will be of limited use to include observer coverage data or percentages in the LOF 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. NMFS continues to refer readers to the SARs for the most current, peer-reviewed information on observer coverage. 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/>.

NMFS acknowledges the lack of inclusion of observer information in the explanation for the proposed elevation of the “CA yellowtail, barracuda, and white seabass drift gillnet” fishery in the proposed 2008 LOF. This was an unintentional oversight. NMFS will ensure that information on observer coverage, if available, is included as part of the justification for proposing classification changes in future LOFs. NMFS has corrected this oversight here: In the draft 2007 Pacific Marine Mammal Stock Assessments, the level of observer coverage in the CA small mesh drift gillnet fishery for white seabass, yellowtail, and barracuda observer coverage was listed as 11 percent in

2002 and 2003. During the public comment of the draft 2007 SARs, errors were found in the listed levels of observer coverage in the CA small mesh drift gillnet for white seabass, yellowtail, and barracuda. The correct levels of observer coverage for 2002, 2003, and 2004, are 11.5 percent, 10.4 percent and 17.6 percent, respectively. There has been no observer coverage in this fishery since 2004. NMFS is seeking funding to observe this fishery in 2008.

*Comment 5:* One commenter reiterated previous comments made on the 2004 and 2007 LOFs 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. The commenter notes that NMFS responded in 2004 stating, “NMFS will consider this comment and whether the LOF applies to high seas fisheries during the development of future proposed LOFs (69 FR 48407, August 10, 2004). The commenter recognized that the proposed 2008 LOF provides a longer explanation of the issue of high seas fisheries, but NMFS has continued to fail to analyze these fisheries and include them on the LOF. Specific fisheries suggested as additions to the LOF 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 continuing to consider the inclusion of U.S.-authorized high seas fisheries in future LOFs. Also, NMFS is gathering available information on the fishing effort, gear used, and marine mammal interaction levels specific to U.S. vessels operating in high seas fisheries. NMFS faces significant challenges in accurately categorizing high seas fisheries in the LOF. As discussed under in the preamble of this rule, fisheries are categorized in the LOF based on the level of mortality and serious injury of marine mammal stocks relevant to the stock’s PBR level. PBR levels are calculated based on the stock’s abundance using data presented in the SARs, required under section 117 of the MMPA (16 U.S.C. 1386). Section 117 requires NMFS to prepare SARs for marine mammal stocks occurring “in waters under the jurisdiction of the

United States.” NMFS does not develop SARs, or therefore calculate PBR levels, for marine mammal stocks on the high seas. NMFS will continue to explore options for categorizing high seas fisheries in a future LOF in the absence of marine mammal stock abundance and PBR level information. Please see response to Comment 9 in the final 2007 LOF (72 FR 14466, March 28, 2007) and the preamble of this rule for information on NMFS current efforts.

NMFS provides high seas fishing permits under the High Seas Fishing Compliance Act (HSFCA). NMFS issues permits only for high seas fisheries analyzed in accordance with the NEPA and the ESA. There are currently 7 U.S.-authorized high seas fisheries: Atlantic Highly Migratory Species Fisheries (50 CFR 635), Pacific Highly Migratory Species Fisheries (50 CFR 660, subpart K), Western Pacific Pelagic Fisheries (50 CFR 665, subpart C), South Pacific Albacore Troll Fishing, Pacific Tuna Fisheries (50 CFR 300, subpart C), South Pacific Tuna Fisheries (50 CFR 300, subpart D), and the Antarctic Marine Living Resources (50 CFR 300, subpart G). For more information please see the NMFS Office of International Affairs HSPCA information website: <http://www.nmfs.noaa.gov/ia/services/highseas.htm>.

The commenter suggested the addition of several specific high sea fisheries to the LOF, including the Cobb Seamount fishery, Pacific pelagic squid jig fishery, South Pacific tuna purse seine fishery, and fisheries in the CCAMLR area including the Patagonian toothfish longline fishery and a trawl fishery for krill. Currently, NMFS does not authorize U.S. vessels to participate in the Cobb Seamount fishery or the Pacific pelagic squid jig fishery. Therefore, these fisheries would not be considered for addition to the LOF. Also, the South Pacific tuna purse seine fishery is managed separately under section 301 of the MMPA (16 U.S.C. 1411); therefore, it would not be added to the LOF required under section 118 of the MMPA. Regarding the CCAMLR fisheries, in the past there has been a single U.S. vessel participating in the trawl fishery for krill. However, this vessel has not fished in the last 2 years. Also, in the past there have been 2 U.S. vessels (under 1 owner) participating in the Patagonian toothfish longline fishery. NMFS has not received any permit applications for U.S. vessels to participate in either of the CCAMLR fisheries in the coming year.

*Comment 6:* One commenter stated that all Category I and II fisheries not already subject to take reduction teams should promptly have such teams

convened for them. The Category I HI longline fishery should be the highest priority as takes continue to exceed PBR for false killer whales.

*Response:* At this time, NMFS' resources for TRTs are fully utilized and new TRTs will be initiated when additional resources become available. When additional TRTs are convened, they will follow priorities set out in section 118(f)(3) of the MMPA (16 U.S.C. 1387). When there is insufficient funding available to develop and implement a TRT for all stocks that interact with Category I and II fisheries, the highest priority for developing and implementing new TRTs will be given to species or stocks whose level of incidental mortality and serious injury exceeds PBR, those with a small population size, and those which are declining most rapidly.

#### *Comments on Fishery Classification Methodology*

*Comment 7:* One commenter reiterated previous recommendations that NMFS revise the dividing PBR thresholds for Category I and II fisheries. The current range for a Category II fishery is an interaction rate between 1 percent and 50 percent of a stock's PBR, which is too broad and unnecessarily lumps fisheries with rare interactions alongside fisheries with numerous interactions. NMFS uses catch as a proxy for fishing effort, unreasonably large expansion factors, and double counting of interactions, resulting in one rare event in a fishery being expanded into an unrealistic overestimation of takes. Given the precautionary methodology in the PBR formula, the minimum threshold for Category II should be increased from 1 percent to 10 percent of PBR. Interactions under 10 percent of PBR should be a Category III. In doing so, rare events (i.e., 1 take in 5 years) would result in a Category III instead of a Category II classification.

*Response:* 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 refers the reader to the response to comments 5 through 9 in that rule for a detailed explanation of the reasoning for setting the dividing thresholds between Category II and III as 1 percent of PBR. NMFS also finalized an Environmental Assessment (EA) in August, 1995, to analyze the impacts of the regulations implementing the 1994 amendments on the environment and the public. NMFS also finalized a

revised EA in December 2005 on the process of classifying U.S. commercial fisheries. A full copy of the updated 2005 EA can be found at [http://www.nmfs.noaa.gov/pr/pdfs/interactions/lof\\_ea.pdf](http://www.nmfs.noaa.gov/pr/pdfs/interactions/lof_ea.pdf).

The fishery classification criteria consider the rate of incidental serious injury and mortality of marine mammals in commercial fisheries on a stock-specific basis. Therefore, the rate of interaction of a fishery with a marine mammal stock with a low PBR can be significant even if it appears to be a minimal problem based on the size of the fishery or frequency of the interactions. The chosen approach allows NMFS to focus management actions where fishery interactions have a significant negative effect on the population.

In addition to the 1-percent threshold, the definitions of Category II and III fisheries include qualitative criteria that allow the Assistant Administrator for Fisheries to place a fishery into Category II or III in the absence of reliable information. This qualitative criteria will allow the Assistant Administrator to take into consideration cases where the PBR level for a particular stock is very low and/or where the level of incidental interaction with commercial fisheries is low and not likely to delay the population's attainment of its Optimum Sustainable Population. See the general description of the two-tiered scheme and qualitative criteria that may be used to classify a fishery in the preamble in this rule under *Fishery Classification Criteria*.

*Comment 8:* One commenter questioned NMFS' inconsistent use of time periods in the LOF, instead of always including interaction data from the most recent 5-year period (e.g. 2002–2006 for the 2006 SAR). For some fisheries, including those with high levels of observer coverage, the time period used to calculate annual take rates to categorize fisheries is 2000–2004. For other fisheries the time period is 2001–2005. Given that the most recent final SAR is 2006, why isn't the time period used to calculate annual interaction rates and classify fisheries for all fisheries 2002–2006? Or consistent for those fisheries with observer coverage every year?

*Response:* Fishery classifications on the LOF are based on interaction data published in the most recent SARs, when available. SARs are revised on a rotating schedule, so not all SARs will include data from the same period of time. Section 117 of the MMPA requires NMFS to review SARs for strategic stocks and for stocks for which

significant new information is available at least annually, and at least once every 3 years for all other stocks, and make changes if necessary. Therefore, while the SARs for strategic stocks are reviewed annually and updated if new information is available, SARs for non-strategic stocks may be updated only once every 3 years.

Also, it takes approximately a full year to develop new, final SARs. The annual interaction rates presented in the SARs are based on the most current observer data available. The draft SARs for 2006 were prepared in the fall of 2005; at which time, observer data for 2004 were the most current data available. Observer data for 2005 became available in 2006 and were incorporated into the draft SARs for 2007, which was published in June, 2007.

*Comment 9:* One commenter questioned NMFS' continued use of a recovery factor of 0.1 in the PBR formula for most whale stocks instead of updating the recovery factor based on new information. The commenter cited various sections of the GAMMS Workshop Report (Wade and Angliss, 1996) discussing recovery factors, including text stating that recovery factors can be adjusted to accommodate additional information, when mortality estimates are known to be relatively unbiased based on high observer coverage, and to allow for management discretion as consistent with the goals of the ESA and MMPA. The commenter cites 3 examples in the report of recovery factors for ESA listed stocks being altered.

*Response:* This comment is not specifically relevant to the LOF. While fisheries on the LOF are categorized based on the incidental mortality and serious injury relevant to a marine mammal stock's PBR, the calculation of PBR levels are completed and peer-reviewed during the annual SARs process. NMFS urges the commenter to present these comments during the public comment period for the draft 2008 SARs, as the comment period for the draft 2007 SARs has closed.

*Comment 10:* One commenter stated that a take in which the marine mammal stock cannot be determined should not be counted as a take for 2 separate stocks, but should be apportioned across the 2 stocks in question using a weighted probability.

*Response:* See response to Comments 13 and 14 in the final 2005 LOF (71 FR 247, January 4, 2006) and Comment 10 in the final 2003 LOF (68 FR 41725, July 15, 2003) for detailed responses to the same comment. Where there is considerable uncertainty regarding to

which stock a serious injury or mortality should be assigned, NMFS exercises a conservative approach of assigning the serious injury or mortality to both stocks. Clearly, if information were available regarding the location of take, genetics of the taken animal, or other conclusive information linking the serious injury or mortality to a specific stock, NMFS would use it to assign the take to a specific stock. Also, NMFS continues to conduct research and review data to determine to which stock an incidental mortality or serious injury can be assigned. For example, in this final rule NMFS is removing the Gulf of Alaska, Aleutian Islands, and Bering Sea transient stock of killer whales from the list of species incidentally injured or killed in two AK fisheries based on genetic analyses of tissue samples collected by observers over the past few years, which revealed that the interaction occurred with the resident stock of killer whales (see below under Summary of Changes to the LOF for 2008).

*Comment 11:* One commenter stated that if NMFS persists in using observed catch as a proxy of effort and expands observed takes, then takes that occur outside of the observed sample should not be counted. The apparent point of expansion is to make an estimate for the “unobserved” takes; therefore, counting takes in the unobserved sample is double counting.

*Response:* See response to Comments 19 and 20 in the final 2005 LOF (71 FR 247, January 4, 2006) for a very detailed response to the same comment. Also see response to and Comment 47 in the Notice of Availability for the 2005 SARs (71 FR 26430, May 4, 2006). The analysis of bycatch is stratified into many different strata, and estimates of bycatch are calculated for each individual stratum using data from monitored hauls. If an observer reported an injury or mortality incidental to a non-monitored haul, and there were no injuries or mortalities from monitored hauls in that strata, the report in the non-monitored haul is used as the estimate of serious injury and mortality for that stratum. Data from non-monitored hauls are not extrapolated using the ratio estimation approach but are simply added to an extrapolation using observer data from monitored hauls.

#### *Comments on Fisheries in the Pacific Ocean*

*Comment 12:* Two commenters questions the SAR for false killer whales in HI. One commenter stated that the proposed 2008 LOF perpetuates serious errors and uncertainties found in NMFS’

SAR for false killer whales, errors which persist in the draft 2007 SAR. NMFS’ SAR conflates false killer whale stocks, underestimates false killer whale abundance, and overestimates the seriousness of the deep-set longline fishery’s (within the Category I HI longline fishery) interactions with false killer whales.

The second commenter stated that there is no scientifically recognized HI stock of false killer whales that the proposed LOF lists as incidentally killed or injured in the Category I HI longline fishery. There are large uncertainties in the available science for a “HI” stock, including the fact that NMFS’ population assessment is based on a single sighting. Available information indicates that the HI-based tuna longline fishery interacts with a larger Eastern North Pacific stock of false killer whales. This information needs to be presented and objectively discussed by NMFS and outside peers.

*Response:* This comment pertains to the SAR for false killer whales, HI stock, and has been recently addressed in the response to comments 46–67 in the Notice of Availability of the final 2006 SARs (72 FR 12774, March 19, 2007). NMFS stands by the analysis of the false killer whale stocks and recognizes that it is the best information currently available. NMFS will continue to work to reduce any uncertainties that may be associated with this stock assessment.

*Comment 13:* Two commenters recommended that NMFS distinguish between the shallow-set and the deep-set fisheries in the Category I HI longline fishery. The HI longline fishery should be split into 2 fisheries based on the fact that the shallow-set and deep-set fisheries have different target species, operating patterns, management regimes, and interaction rates. Splitting the HI longline fishery into two fisheries would result in a Category I deep-set fishery and a Category III shallow-set fishery. The shallow-set fishery began commercial fishing in late 2004 and is distinct from the deep-set fishery in that it targets swordfish while the deep-set fishery targets tuna; uses different gear (including the number of hooks, gangions and float intervals); uses different bait; and fishes in different areas of the Pacific Ocean (generally does not operate within the HI EEZ) at different times of day. The shallow-set fishery, which has 100 percent observer coverage, has significantly different interaction and mortality rates involving protected species. An interaction with a false killer whale has never been observed in the shallow-set fishery. Also, the shallow-set and deep-set fisheries are managed differently by the

Western Pacific Regional Fishery Management Council and NMFS and have entirely different regulatory requirements.

*Response:* The commenters requested that the HI longline fisheries be split and subsequently listed in the LOF as two separately managed commercial fisheries: (1) the deep-set (tuna target) fishery; and (2) the shallow-set (swordfish target) fishery. This is the first request to split the fishery in this manner that NMFS has received to date.

NMFS believes the request to split the HI longline fishery into two fisheries (the deep-set fishery and the shallow-set fishery) for purposes of the LOF has merit, and is therefore taking the commenters’ request under consideration. Indeed, NMFS has split other fisheries in prior year’s LOFs based upon factors such as different target species, operating patterns, regulations, marine mammal interaction rates, etc. However, if NMFS were to split the HI longline fishery into a deep-set and shallow-set fishery in the LOF, and then potentially re-categorize the shallow-set fishery as a Category III fishery, these changes would necessarily be presented in the 2009 Proposed LOF, and not in the 2008 Final LOF, as making such considerable changes between a “Proposed” and “Final” draft of the LOF would negate the important public comment and response period required for agency rulemaking.

Additionally, if NMFS were to make the changes articulated above, NMFS would need to consider whether the current system under which the HI longline fishery is permitted would also need to be changed. The HI longline fishery is managed, in part, under the Fishery Management Plan (FMP) for Pelagic Fisheries of the Western Pacific Region (Pelagics FMP), as amended. The Pelagics FMP and its amendments are developed by the Western Pacific Fishery Management Council under the authority of the MSA, 16 U.S.C. 1801 *et seq.* NMFS also promulgates regulations under the MSA to administer enforceable elements of the Pelagics FMP.

Currently, participants in the HI longline fishery are required to obtain a single HI Longline Limited Entry Permit whether they intend to engage in deep-set longline fishing, shallow-set longline fishing, or both. Integrated with the single Limited Entry Permit requirement is the MMAP Certificate. Any vessel engaging in a Category I or II fishery must obtain a MMAP certificate from NMFS in order to lawfully incidentally take a marine mammal in a commercial fishery. Unless the current fishery permitting system under the FMP is

likewise amended, the single Limited Entry Permit would still require a MMAP certificate even if the longline fishery was subsequently split into Category I deep-set and Category III shallow-set fisheries. NMFS will be soliciting comments on these and other issues in the 2009 Proposed LOF.

*Comment 14:* One commenter reiterated a comment from the 2007 LOF recommending NMFS elevate the Category III “CA lobster, prawn, shrimp, rock crab, fish pot” and the “WA/OR/CA crab pot” fisheries to Category II based on interactions with humpback and gray whales. At least 14 large whales were documented entangled in this gear type from 2000–2005.

*Response:* As described in responses to comment 18 in the final 2007 LOF (72 FR 38393, March 28, 2007), NMFS is aware of interactions between humpback and gray whales and pot and trap gear and is taking steps to address this issue. The NMFS Northwest Regional Office reviewed interactions between humpback and gray whales and all crab trap/pot gear in the waters off WA and OR and found that there have been no observed takes of humpback whales and that the level of take of gray whale was well below 10 percent of the stock’s PBR. Therefore, the available information did not support elevating the WA and OR crab fisheries to Category I or II on the 2007 LOF. The NMFS Southwest Regional Office recently completed a draft characterization of the CA pot and trap fisheries as a first step in helping to determine which fisheries are most likely to be interacting with large whales and whether recategorization of the “CA lobster, prawn, shrimp, rock crab, fish pot” fishery or the CA component of the “WA/OR/CA crab pot” fishery is appropriate. Before NMFS can recategorize these fisheries, a better understanding of the fisheries is necessary, since reports of interactions between large whales and pot and trap gear come primarily from stranding reports (including sighting of free-swimming whales). These reports may not provide reliable identification of the fishing gear types associated with an interaction because it is difficult to distinguish between various pot and trap gears from surface observations of line and floats. Currently, NMFS is working with the State of CA to develop the characterization of the state and Federal fisheries that utilize these gear types in the waters off of CA.

Furthermore, NMFS is reviewing observed marine mammal entanglements from stranding reports to assess the extent of injuries (i.e., whether or not the injuries were serious

injuries) and whether specific fisheries can be identified from the available data.

NMFS is also considering whether to change descriptions for the CA pot and trap fishery in the LOF. Currently, the CA lobster, prawn, shrimp, rock crab and fish pot fisheries are listed as one fishery on the LOF. NMFS is reviewing of the CA pot and trap fisheries to determine whether these fisheries should be listed separately on future LOFs to more accurately reflect spatial and temporal differences in the various fisheries, the regulatory authority for the fisheries, and the likelihood of interactions with marine mammals.

*Comment 15:* One commenter commended NMFS for its support of efforts to address concerns regarding trap and pot fisheries, such as support for research efforts and outreach efforts to encourage voluntary reductions in the amount of potentially entangling gear. The commenter encouraged NMFS to continue its work with Regional Fishery Management Councils to improve monitoring and mitigation of serious injury and mortality.

*Response:* NMFS acknowledges this comment. See the response to comment 14 above for more information related to these fisheries.

*Comment 16:* One commenter noted that the number of vessels listed in Table 1 of the proposed 2008 LOF for the Category III “WA/OR/CA groundfish trawl” fishery is incorrect. Table 1 indicates an estimated 585 vessels participating; however, the Pacific Fishery Management Council’s Groundfish Management Team estimates that 160–180 vessels will participate in 2007. The estimated range is based on recent participants, which varies depending on the choice of some skippers to participate in trawl fisheries on the West Coast or in AK.

*Response:* NMFS acknowledges this comment and will make the suggested change to the number of participants in the “WA/OR/CA groundfish trawl” fishery to 160–180.

*Comment 17:* Two commenters supported the elevation of the “CA yellowtail, barracuda, and white seabass drift gillnet” fishery to Category I because the estimated annual serious injury and mortality of long-beaked common dolphins incidental to the fishery exceeds 50 percent of the stock’s PBR. One commenter stated that a take reduction team must now be convened because this fishery interacts with strategic marine mammal stocks.

*Response:* Since the publication of the proposed 2008 LOF, new information has become available on the level of serious injury and mortality of the CA

stock of long-beaked common dolphin in the “CA yellowtail, barracuda, and white seabass drift gillnet” fishery which indicates that elevating this fishery to Category I is not appropriate at this time. The proposed 2008 LOF states that, based on observer documented interactions in 2003 and 2004, reported in the draft 2007 SAR for long-beaked common dolphin, the estimated annual serious injury and mortality of the CA stock of long-beaked common dolphins in the “CA yellowtail, barracuda, and white seabass drift gillnet” fishery is approximately 82 percent of the stock’s PBR. However, during the public comment on the draft 2007 SARs, errors were found in the reported levels of observer coverage in this fishery. The correct levels of observer coverage for 2002, 2003, and 2004, are 11.5 percent, 10.4 percent, and 17.6 percent, respectively. Based upon these observer coverage levels, NMFS recalculated the mean annual serious injury or mortality of the CA stock of long-beaked common dolphin. The revised mean annual serious injury or mortality in this fishery is 4.7 (0.98) (CV in parenthesis), which is 43 percent of the stock’s PBR of 11. Based upon these revisions to the draft 2007 SAR, the “CA yellowtail, barracuda, and white seabass drift gillnet” fishery will remain a Category II fishery, and will not be elevated to a Category I fishery as proposed in the proposed 2008 LOF. The strategic stock classification of the CA stock of long-beaked common dolphins remains supported by the updated information in the SAR. Please also see the response to Comment 4 in this rule for additional information.

In April 2007, the Pacific Offshore Cetacean Take Reduction Team (POCTRT) considered CA State gillnet fisheries at their team meeting, including the “CA yellowtail, barracuda, and white seabass drift gillnet” fishery, and the possible impacts on marine mammals. The POCTRT made a number of recommendations to NMFS related to these fisheries, including expanding observer coverage, encouraging research and information sharing on methods to reduce marine mammal bycatch, and adding representatives from these fisheries and an additional CDFG advisor to the POCTRT to address marine mammal bycatch in state gillnet fisheries. NMFS and the POCTRT are considering expanding the scope of the POCTRT to include CA gillnet fisheries, including the “CA yellowtail, barracuda, and white seabass drift gillnet” fishery. Please see response to



comment 6 in this rule for more information on Take Reduction Teams.

*Comment 18:* One commenter recommended NMFS remove short-finned pilot whales from the list of species incidentally killed or injured in the Category II "CA squid purse seine" fishery for two reasons. First, the information presented in the draft 2007 SAR for the CA squid purse seine fishery does not reflect the best available science. The SAR states that the fishery is "not currently monitored, and has expanded markedly since 1992." However, NMFS Southwest Region observer data from the CA Coastal Pelagic Purse Seine Observer Program indicates that 95 pilot whale interaction-free trips were observed from July 2004 to March 2007. Second, the draft 2007 SAR assigns each of the 14 incidents of "undetermined" strandings of short-finned pilot whales as "probably" the result of interactions with the "CA squid purse seine" fishery. However, the SAR does not provide clear evidence for this determination. Since NMFS does not typically assign fishery-specific mortality from fishery interaction stranding events in the absence of clear evidence (for example, several East Coast species covered under TRPs including harbor porpoise, bottlenose dolphins, and large whales), then it should not be done in this case.

*Response:* NMFS acknowledges the error in the draft 2007 SAR regarding the monitoring of the "CA squid purse seine" fishery and it will be corrected in the final 2007 SAR. NMFS has reviewed the report with records of the stranded short-finned pilot whales from 1975 through 1990 and has concluded that the strandings were most likely caused by interactions with the purse seine fishery for squid. This is based upon the location and time of the strandings and the operation of the squid fishery in the same area and time and other details from the stranding. NMFS notes that there have been no observed takes of short-finned pilot whales in this fishery since the observer program began in 2004. However, observer coverage in this fishery is quite low at less than 2 percent annually. The recommendation to remove short-finned pilot whales from the list of marine mammals incidentally killed in the squid purse seine fishery will be further reviewed by NMFS when more observer information becomes available. NMFS will continue to monitor this fishery and consider the recommendation to remove short-finned pilot whales, CA/OR/WA stock, from the list of species incidentally killed or injured in the "CA squid purse seine" fishery for the 2009 LOF.

*Comment 19:* One commenter requested a review of the Category II "CA squid purse seine" fishery interaction with a species listed as "common dolphin, unknown" and removal of this species from the list of species incidentally killed or injured in this fishery if supported by the data. The CA Coastal Pelagic Purse Seine Observer Program data contains an observed "1 dead unidentified common dolphin" off Santa Barbara on January 3, 2005. The observer data also indicated that a group of seven unidentified common dolphins were sighted near the vessel during this particular haul. The commenter requests that NMFS re-examine this interaction and determine whether the animals' location, group size, and time of capture might better match the survey distribution and group observations for short-beaked common dolphins than for long-beaked common dolphins. Given the recent increased abundance reported for short-beaked common dolphins and virtual disappearance of long-beaked common dolphins in CA waters, the commenter believes the animal interaction was likely with a short-beaked common dolphin.

*Response:* There is insufficient information available to identify the species of common dolphin observed taken in the "CA squid purse seine" fishery. Both species, long-beaked common dolphins and short-beaked common dolphins, utilize much of the same habitat and overlap in areas with this fishery. Therefore, it is possible that either species could have been taken.

*Comment 20:* One commenter recommended that the "strategic" designation for the long-beaked common dolphin be viewed with extreme caution in the 2008 LOF. The draft 2007 SAR and proposed 2008 LOF do not adequately reflect the stock's high interannual variability. Despite a slight increase in human interactions from 11 to 17 animals, the observed population plummeted causing the PBR to drop from 242 animals to 11 animals reported in the draft 2007 SAR. Clearly the reason for the strategic listing is not fishery interactions but likely environmental in nature, and the LOF should clearly reflect this.

*Response:* It is the purpose of the LOF to categorize fisheries based on their level of mortality and serious injury of a marine mammal stock relative to the stock's PBR level. It is not the purpose or intent of the LOF to determine a stock's PBR or status as strategic. The factors leading to a stock's designation as "strategic" are irrelevant for the purposes of categorization fisheries on the LOF. NMFS urges the commenter to

present these comments during the public comment period for the draft 2008 SARs, as the comment period for the 2007 SARs has closed.

One error was found in the draft 2007 SAR during public review related to long-beaked common dolphins and takes in the CA small mesh drift gillnet fishery for white seabass, yellowtail, and barracuda; the fishery was observed at 11.5 percent, 10.4 percent and 17.6 percent respectively in 2002, 2003, and 2004, and one serious injury or mortality was observed in 2003 and one in 2004, with none observed in 2002. The draft SAR does not list the 2004 observer coverage and assigned the observed takes of long-beaked common dolphins to the years 2002 and 2003. This error will be corrected in the final 2007 SARs and will lower the mean annual takes estimate for this stock to from 17 to 12.5, but this adjustment does not change the strategic designation of this stock.

*Comment 21:* One commenter stated that the Category II Bering Sea Aleutian Islands (BSAI) Pacific cod longline fishery has a high level of observer coverage and effort is known, yet catch is used as a proxy for estimating effort. A proxy is not needed in cases where observer coverage is high and effort is known. Also, the Science and Statistical Committee (SSC) of the North Pacific Fishery Management Council stated in minutes from its February 2005 meeting that NMFS should "explore the use of direct measures of fishing effort (instead of using catch as a proxy for effort) in future analyses at least when and where possible."

*Response:* The response to Comment 15 in the final LOF for 2005 states that catch is the only data that can be used to measure effort for all vessels, seasons, and areas, to measure relative levels of effort (71 FR 247, 4 January 2006). NMFS took note of the recommendation made by the North Pacific Fishery Management Council's SSC to consider other measures of fishing effort, and discussed this with the analyst. At this time, catch remains the best method of quantifying observed and total fishing effort. Should another measure of effort become available that can be used for all vessels, seasons, and areas, NMFS will consider modifying the analytical approach.

*Comment 22:* One commenter noted that, according to a study by Perez in 2004, 68 percent of longline hauls from 1998–2003 were sampled by observers. Also, NMFS stated in 2000 (in a Pacific cod paper) that 94 percent of the BSAI Pacific cod longline harvest came from observed vessels.

*Response:* The response to Comment 25 in the final LOF for 2005 (71 FR 247, 4 January 2006) describes why there is a difference between the percent of hauls observed (or the percent of hooks observed, or the percent of sets observed) and the percent of boats observed. Also, NMFS notes that the commenter did not provide citations for the literature referenced in the comment.

*Comment 23:* One commenter asked NMFS to explain certain observer percentages and associated expansions of takes in the 2006 SARs associated with the Category II BSAI Pacific cod longline fishery. The 2006 SAR for ribbon seal lists one take in 2001 (although the most recent 5-year period of 2002–2006 should make this interaction drop out), which is expanded to 3.0 takes with observer coverage of 29.5 percent; for Steller sea lion (Western stock) lists one take in 2002, expanded to 3.7 takes with observer coverage of 29.6 percent; and for killer whale (Eastern North Pacific Alaska resident) lists one take in 2003, expanded to 4.2 takes with observer coverage of 29.9 percent. Why does one take, at the same stated level of observer coverage (29 percent) expand to a range of 3 to 4.2 takes depending on the stock?

*Response:* To provide as precise an estimate of marine mammal bycatch as possible, fishery effort and observed marine mammal serious injury/mortality levels are stratified by fishery, geographic area and by 2-week period. The percent observer coverage reflected in the SARs is an average percent observer coverage, not the percent for each strata. Thus, users of the SARs cannot use the reported percent observer coverage in the SARs to directly calculate an estimated marine mammal serious injury/mortality from the observed serious injury/mortality level.

*Comment 24:* One commenter questioned why the observer coverage in these SARs listed as 29 percent when 94 percent of the BSAI Pacific cod longline catch comes from observed vessels (NMFS 2000 Pacific cod paper) and 68 percent of the catch comes from observed sets (Perez 2004)?

*Response:* Please see response to comment 22. Also, NMFS notes that the commenter did not provide citations for the literature referenced in the comment.

*Comment 25:* One commenter stated that the formula used to estimate PBR for the strategic Central North Pacific stock of humpback whales uses a population estimate from 1993, which causes several fisheries that interact with this stock to be classified as

Category II. However, all studies indicate that this stock is steadily increasing. A 2001 study calculates an annual growth rate increase of 7 percent (now used as  $r_{max}$ ) and a 2004 study calculates an annual growth rate increase of 10 percent. A 2002 study of the Southeast humpback stock reports that estimates are substantially higher and that the abundance has increased in recent years. The commenter cites the GAMMS workshop report (Wade and Angliss, 1996) which states, “The SARs should be revised whenever new information becomes available on abundance, mortality,  $r_{max}$ , or stock structure “Why then is the 1993 estimate still used if growth population has been 7 percent–10 percent annually?”

*Response:* This is a comment that related to the Stock Assessment Reports, not the proposed List of Fisheries for 2008. In short, a change in the abundance estimate will be made when the results of a recent basin-wide study of North Pacific humpback whales is available in 2009 or 2010.

*Comment 26:* One commenter questioned the use of 16-year old data to categorize the Prince William Sound salmon drift gillnet fishery as Category II. The categorization is partly due to estimated takes of Stellar sea lions (Western stock) observed in 1990–1991, when 0 and 2 takes of Stellar sea lions were observed in 1990–1991, respectively. With 4–5 percent observer coverage the take expanded to 29, or 14.5 takes per year, comprising 50 percent of all fishing mortality of Stellar sea lions (Western stock).

*Response:* NMFS agrees that marine mammal interaction data used to classify commercial fisheries should be as current as is practicable to ensure that the estimated levels of serious injury and mortality reflect current fishing practices and conditions. In some cases, information on marine mammal serious injury and mortality is quite dated. Currently there are eleven Category II state-managed fisheries in Alaska on the LOF. Since 1990, seven Category II fisheries have been observed. Of those, two have been reclassified from Category II to Category III because the observer program documented very low levels of marine mammal serious injuries and mortalities that occurred incidental to these fisheries. Six state-managed Category II fisheries have never been observed. With currently available funds, only one fishery can be observed at a time due to the high cost of the observer programs. There have also been interim years with no Alaska state-managed fishery observed. Ideally, NMFS would observe each of these

fisheries every five years to ensure data quality and timeliness. However, without the availability of newer information, NMFS must rely on the best available information.

*Comment 27:* One commenter noted that the fishery description for the Category II AK Metlakatla/Annette Island salmon drift gillnet fishery is incorrect. The proposed 2008 LOF states that this fishery is managed by the ADFG with a tribal portion separate from the Category II “AK Southeast salmon drift gillnet” fishery only for regulation purposes. The commenter states that this fishery is an exclusively tribal fishery managed exclusively by the tribe. There is no relation or connection with any state fishery or management by any other state or Federal agency.

*Response:* NMFS agrees and the change has been made to the final 2008 LOF.

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

*Comment 28:* One commenter stated that all of the butterfish and *Illex* and *Loligo* squid fisheries on the East coast are bottom trawl fisheries, yet the proposed 2008 LOF defines them as Mid-Atlantic mid-water trawl fisheries. The mackerel fishery consists primarily of mid-water trawlers, but also includes bottom trawls. This information can be found in the most recent stock assessments for each fish and squid species at: <http://www.nefsc.noaa.gov/nefsc/publications/series/crdlist.htm>. In addition, butterfish were deemed overfished in 2005 and there is no longer a directed fishery. Trip limits and a very low bycatch quota will be in place for 2008.

*Response:* NMFS agrees that based on how some trawl gear is fished in the *Illex* and *Loligo* squid fisheries, the current “Mid-Atlantic mid-water trawl” designation for the *Illex* and *Loligo* squid fisheries may not be an appropriate description of the fishing gear used for these specific Mid-Atlantic fisheries. However, in the past NMFS has also received information that suggests that the *Illex* and *Loligo* squid fisheries utilize their trawl gear in a more traditional mid-water trawl fishing operation. Therefore, NMFS believes that it would be inappropriate to reclassify this fishery in this 2008 final LOF. NMFS will consult with the Atlantic Trawl Gear Take Reduction Team and the Northeast Fisheries Science Center to determine a more appropriate characterization. NMFS will then propose any necessary changes in the 2009 proposed LOF, allowing adequate time for public comment. The

inclusion of the butterfly fishery within the "Mid-Atlantic mid-water trawl" fishery will also be addressed and examined at that time.

*Comment 29:* One commenter reiterated their comment from the 2007 LOF raising concern over NMFS' failure to adequately classify certain Gulf of Mexico fisheries as Category I or II based on known or estimated mortality and serious injury of marine mammals in those fisheries. The commenter specifically recommended NMFS elevate the Gulf of Mexico blue crab trap/pot fishery to at least a Category II and perhaps a Category I, and the Gulf of Mexico menhaden purse seine fishery to a Category I, based on known or likely impacts to bottlenose dolphin stocks.

*Response:* NMFS does not believe elevation of the "Gulf of Mexico blue crab trap/pot" fishery or "Gulf of Mexico menhaden purse seine" fishery is warranted at this time. There is no observer program for either of these fisheries; therefore, NMFS relies on stranding data and fishermen self-reports to document fishery interactions with marine mammals. Available data from both of these sources do not justify a reclassification of either fishery at this time. However, NMFS will continue monitoring fishermen self-reports and stranding data, as well as enhance stranding response in the Gulf of Mexico, which has been low, particularly following Hurricanes Katrina and Rita. Observer coverage for both these fisheries also remains a priority when resources become available.

Available data indicate interactions with marine mammals occurred in both fisheries between 2002–2006. In the Gulf of Mexico blue crab trap/pot fishery, stranding data indicate there were two confirmed bottlenose dolphin interactions with crab pot fishing gear between 2002–2006, one alive and one dead. In the same period, four dead bottlenose dolphins stranded with rope or rope marks that may have been from trap/pot gear, but cause of death could not be determined. NMFS acknowledges these numbers may underestimate the number of interactions that are occurring. However, interpreting the data is difficult due to limitations of the stranding network to accurately document human interactions, and insufficient information on bottlenose dolphin abundance and stock structure in the Gulf of Mexico to calculate PBR or quantify the impacts of fishery interactions on bottlenose dolphin stocks.

The "Gulf of Mexico menhaden purse seine" fishery was observed by

researchers from Louisiana State University in 1992, 1994, and 1995. The observers documented nine bottlenose dolphin captures, three of which were mortalities. Using observed and total fishery effort data, the number of takes was linearly extrapolated to an estimate of 68 animals. On the basis of this information, the fishery was elevated from Category III to Category II on the 1999 LOF (64 FR 9067, February 24, 1999). Since that time, there has been no observer coverage in this fishery. Fishermen self-reports through the MMAP reveal five bottlenose dolphin mortalities from 2002–2006, with two mortalities in 2002, one in 2004, and two in 2005. One of these animals was believed to have been dead prior to capture. However, information gathered under the MMAP cannot be verified and it is not possible to extrapolate these numbers to obtain an estimate of total takes in this fishery.

The current lack of information on bottlenose dolphin abundance and stock structure in the Gulf of Mexico combined with a low level of stranding response, particularly following Hurricanes Katrina and Rita, make it difficult to assess the population-level impacts of either of these fisheries. For example, the percentage of stranded animals that are necropsied is low (FL, TX, and AL necropsied over 50 percent of all stranded marine mammals from 2002–2006, but MS and LA had much lower necropsy rates, 16 percent and 3 percent, respectively), making documentation of human interactions difficult. NMFS is focused on building capacity in the Gulf and increasing the level and quality of stranding response. NMFS held workshops in LA and MS in September 2007 to raise awareness of marine mammal management challenges in the Gulf of Mexico and to enhance marine mammal stranding response. NMFS staff met with representatives from state fishery and wildlife management agencies, marine mammal stranding networks, research institutions, universities, Sea Grant, and other Federal agencies to identify ways to better manage protected and endangered marine mammals in the Gulf of Mexico. Furthermore, NMFS intends to provide additional training workshops in 2008 to enhance the stranding network's capacity for identifying and documenting human interaction, and instruction on conducting necropsies. NMFS expects these efforts to increase the effectiveness of the stranding networks and better inform management decisions in the future.

*Comment 30:* One commenter reiterated concerns raised in their letters

on the 2003 through 2007 LOFs recommending that NMFS expedite its investigation of bottlenose dolphin stock structure and reevaluate the classification of Gulf of Mexico fisheries. The commenter further recommended that NMFS expand its efforts to collect reliable information on serious injury and mortality of marine mammals incidental to Gulf of Mexico fisheries, with priority given to instituting an observer program for the menhaden purse seine fishery and expanding efforts to evaluate bottlenose dolphin entanglement in the blue crab trap/pot fishery. NMFS has initiated efforts to address some of these issues and has indicated that it intends to reevaluate these fisheries as new information becomes available, particularly information regarding the stock structure of bottlenose dolphins in the Gulf of Mexico. Nonetheless, the commenter remains concerned about marine mammal interactions with Gulf of Mexico fisheries, believes that more active management is needed in this region, and therefore reiterates its previous recommendations.

*Response:* NMFS agrees that collection of reliable information on serious injury and mortality of marine mammals in the Gulf of Mexico is essential. NMFS is making efforts to more actively manage marine mammals and build capacity in this area to: (1) address significant data gaps regarding the distribution, abundance, stock structure, and health of marine mammals; (2) enhance stranding response capabilities to better understand threats to marine mammals in the Gulf of Mexico ecosystem, and (3) ensure constituents are informed regarding NMFS efforts, threats to the ecosystem, and mitigation strategies to further reduce impacts to marine mammals. See the response to Comment 29 regarding efforts to enhance stranding network coverage and response in the Gulf of Mexico.

Managing bottlenose dolphin stocks in the Gulf of Mexico is especially challenging due to lack of data, particularly regarding abundance and stock structure. There is currently no PBR calculated for coastal stocks or bay, sound, and estuarine stocks, so NMFS is unable to assess the population-level impacts of fishery-related serious injuries and mortalities. To address this, NMFS is working towards updating estimates of bottlenose dolphin abundance and refining our understanding of bottlenose dolphin stock structure in the Gulf of Mexico. Specifically, in July and August 2007, NMFS completed a ship-based survey of the Gulf of Mexico continental shelf

from 20 m (65.6 ft) depth to 500 m (1640 ft) depth from Cedar Key, FL, to Brownsville, TX, which included line-transect abundance surveys and the collection of over 200 bottlenose dolphin biopsies for stock structure analysis. In 2007, NMFS also completed winter and summer aerial line-transect abundance surveys of coastal bottlenose dolphin stocks (shore to 20 m [65.6 ft] depth) from Key West to the MS River delta. NMFS has also worked on bay, sound, and estuarine stocks, conducting a photo-ID mark-recapture study and biopsy sampling in Choctawhatchee Bay, FL in July and August 2007 and biopsy sampling in Mississippi Sound in 2005 and 2006. Data collected during these surveys are currently being analyzed, and updated information on population abundance and stock structure should be available in the 2008 SARs. Once this information is available and PBR is calculated for each stock, NMFS will be better able to assess the impacts of mortality and serious injury of marine mammals associated with commercial fisheries in the Gulf. Observer coverage remains a priority for Gulf of Mexico fisheries, when resources become available.

*Comment 31:* One commenter stated that the number of vessels listed in the proposed 2008 LOF for the Category II Gulf of Mexico menhaden purse seine fishery is incorrect. Table 2 lists 50 vessels as operating in this fishery; however, 1999 was the last year that the number of vessels in the fishery exceeded 50. Since 2000 there have been between 40 and 42 vessels annually participating in the fishery, 2 of which are typically run boats from the fishing grounds back to the reduction plants and do not actively fish.

*Response:* NMFS thanks the commenter for this information. The number of vessels in the Gulf of Mexico menhaden purse seine fishery has been updated from 50 to 40–42.

#### Summary of Changes to the LOF for 2008

The following summarizes changes to the LOF for 2008 in fishery classification, fisheries listed in 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 classifications and definitions of U.S. commercial fisheries for 2008 are identical to those provided in the LOF for 2007 with the following exceptions.

#### Commercial Fisheries in the Pacific Ocean

##### Fishery Classification

The “CA yellowtail, barracuda, and white seabass drift gillnet (mesh size  $\geq 3.5$  inches and  $< 14$  inches)” fishery is not elevated to a Category I fishery as proposed in the proposed 2008 LOF. The mean annual mortality and serious injury for the CA stock of long-beaked common dolphins was recalculated due to errors in the reporting of observer coverage for this fishery discovered during the public comment period for the draft 2007 SARs. Using the correct information, the data indicate that the annual mortality and serious injury of this stock in this fishery is 43 percent, not 82 percent, of the stock’s PBR as had been reported in the proposed 2008 LOF. For this reason, the “CA yellowtail, barracuda, and white seabass drift gillnet (mesh size  $\geq 3.5$  inches and  $< 14$  inches)” fishery remains a Category II on the final 2008 LOF.

The superscript “2” is removed from Table 1 following the “CA yellowtail, barracuda, and white seabass drift gillnet (mesh size  $\geq 3.5$  inches and  $< 14$  inches)” fishery because it is no longer classified by analogy to other gillnet fisheries. The current data shows that the mortality and serious injury of the CA stock of long-beaked common dolphin is 43 percent; therefore, it is driving the classification of this fishery. A superscript “1” is placed next to this stock in Table 1 to indicate its role as a driving stock.

##### Removal of Fisheries from the LOF

The Category II “OR blue shark floating longline” fishery is removed from the LOF.

The Category II “OR swordfish floating longline” fishery is removed from the LOF.

##### Fishery Name and Organizational Changes and Clarifications

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

The Category III “CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less” is renamed the “CA set gillnet fishery (mesh size  $< 3.5$  inches).”

NMFS reviewed the various West Coast pot and trap fisheries for information on the takes of humpback and gray whales in Category III trap/pot fisheries on the Pacific Coast. NMFS anticipates that incidental serious injury

and mortality of gray and humpback whales in OR and WA crab fisheries is unlikely to increase; therefore, NMFS did not reclassify the crab pot fisheries at this time. NMFS will continue to analyze information from the remaining pot fisheries along the West Coast for potential recategorization of certain West Coast trap/pot fisheries in future LOFs.

The fishery description for the Category II “AK Metlakatla/Annette Island salmon drift gillnet” fishery is changed to reflect that the fishery is an exclusively tribal fishery managed exclusively by the tribe. There is no management by any state or Federal agency.

##### Number of Vessels/Persons

The estimated number of vessels or persons in the Category II “CA anchovy, mackerel, and sardine purse seine” fishery is updated to 63.

The estimated number of vessels or persons in the Category II “CA squid purse seine” fishery is updated to 71.

The estimated number of vessels or persons in the Category III “HI inshore gillnet” fishery is updated to 5.

The estimated number of vessels or persons in the Category III “WA/OR/CA groundfish trawl” fishery is updated to 160–180.

The estimated number of vessels or persons in the Category III “CA abalone” fishery is updated to zero.

The estimated number of vessels or persons in the Category III “CA set gillnet (mesh size  $< 3.5$  inches)” fishery (renamed from the “CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less” fishery in this final rule) is updated to 304.

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

The Hawaiian stocks of striped dolphin and Bryde’s whale are added to the list of marine mammal species and stocks incidentally injured or killed in the Category I “HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line” fishery.

The Gulf of Alaska, Aleutian Islands, and Bering Sea transient stock of killer whales is removed from the list of marine mammal species and stocks incidentally injured or killed in the Category II “AK Bering Sea and Aleutian Islands Pacific cod longline” fishery and the Category III “AK Bering Sea and Aleutian Islands Greenland turbot longline” fishery.

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

## Addition of Fisheries to the LOF

The “GA cannonball jellyfish trawl” fishery is added to the LOF as a Category III fishery.

## Removal of Fisheries from the LOF

The Category III “U.S. Mid-Atlantic hand seine” fishery is removed from the LOF.

## Fishery Name and Organizational Changes and Clarifications

The estimated number of vessels or persons in the Category II “Gulf of Mexico menhaden purse seine” fishery is updated to 40–42.

The list of target fish species associated with the Category II “Atlantic mixed species trap/pot” fishery is expanded to include cunner.

The list of target species associated with the Category II “Southeast Atlantic gillnet” fishery is updated by removing shad.

The description of the Category II “Southeast Atlantic gillnet” fishery is corrected by clarifying that the fishery is also managed under ALWTRP implementing regulations. Management under the ALWTRP was inadvertently left out of the description in the proposed rule.

The boundaries and excluded fisheries associated with the Category I “Mid-Atlantic gillnet” fishery are updated through the addition of the following language, “ NC/SC border, but not including waters where gillnet fisheries are listed as Category II and Category III. At this time, these Category II and Category III fisheries include: the Chesapeake Bay inshore gillnet; NC inshore gillnet; DE River inshore gillnet; Long Island Sound inshore gillnet; and RI, southern MA (to Monomy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet.”

The boundaries and excluded fisheries associated with the Category II “Atlantic mixed species trap/pot” fishery are updated through the addition of the following language, “The Atlantic mixed species trap/pot fishery (Category II) includes all trap/pot operations for species from the U.S.-Canada border down through the waters east of the fishery management demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105), but does not include the following Category I, II, and III trap/pot fisheries: Northeast/Mid-Atlantic American lobster trap/pot; Atlantic blue crab trap/pot; FL spiny lobster trap/ pot; Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot; U.S. Mid-Atlantic eel trap/pot

fisheries; and the Southeastern U.S. Atlantic, Gulf of Mexico golden crab fishery (68 FR 1421, January 10, 2003).”

The definition of the Category II “Mid-Atlantic flynet” fishery, provided in the final 2007 LOF (71 FR 70345, December 4, 2006), is replaced with the following language: “The flynet fishery is a multispecies fishery composed of nearshore and offshore components that operate along the eastern coast of the Mid-Atlantic United States. Flynets are high profile trawls similar to bottom otter trawls. These nets typically range from 80–120 ft (24–36.6 m) in headrope length, with wing mesh sizes of 16–64 in (41–163 cm), following a slow 3:1 taper to smaller mesh sizes in the body, extension, and codend sections of the net. The nearshore fishery operates from October to April inside of 30 fathoms (180 ft–55 m) from NC to NJ. This nearshore fishery targets Atlantic croaker, weakfish, butterfish, harvestfish, bluefish, menhaden, striped bass, kingfishes, and other finfish species. Flynet fishing is no longer permitted south of Cape Hatteras in order to protect weakfish stocks. The offshore component operates from November to April outside of 30 fathoms (180 ft; 55 m) from the Hudson Canyon off NY, south to Hatteras Canyon off NC. These deeper water fisheries target bluefish, Atlantic mackerel, *Loligo* squid, black sea bass, and scup (72 FR 7382, February 15, 2007). *Illex* squid are also targeted offshore (70–200 fathoms [420–1,200 ft; 128–366 m]) during summer months from May to September.” NMFS acknowledges that concerns have been raised over the possible colloquial nature of this fishery and will continue working to resolve these concerns.

The descriptions of the Category II “Northeast anchored float gillnet”, “Northeast drift gillnet”, “Atlantic blue crab trap/pot, and “Atlantic mixed species trap/pot” fisheries are updated to reflect that each is now also managed under ALWTRP implementing regulations under a recent rulemaking (72 FR 57104, October 5, 2007).

The description of the Category II “Mid-Atlantic haul/beach seine” fishery is undergoing change, particularly pertaining to NC beach gear, due to pending rulemakings by NCDMF. An updated description of this fishery will be provided in a future LOF.

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

The Northern Gulf of Mexico continental shelf and Eastern Gulf of Mexico coastal stocks of bottlenose dolphins are added to the list of marine mammal species and stocks incidentally

injured or killed in the Category III “Southeastern U.S. Atlantic, Gulf of Mexico, shark bottom longline/hook-and-line” fishery.

The name of the bottlenose dolphin stocks incidentally seriously injured or killed in the Category I “Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline” and Category III “Gulf of Mexico butterfly trawl” fisheries are changed from “Bottlenose dolphin, Northern Gulf of Mexico outer continental shelf” to “Bottlenose dolphin, Northern Gulf of Mexico oceanic”, and from “Bottlenose dolphin, Northern Gulf of Mexico continental shelf edge and slope” to “Bottlenose dolphin, Northern Gulf of Mexico continental shelf.”

The name the humpback whale stock incidentally killed/injured in the Category I “Northeast sink gillnet”, Category I “Northeast/Mid-Atlantic American lobster trap/pot”, Category II “Northeast anchored float gillnet”, and Category III “Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon” fisheries is changed from “Western North Atlantic (WNA)” to “Gulf of Maine.”

## 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. Bycatch of species or stocks identified is not necessarily driving a fishery’s classification in a given Category. NMFS has designated those stocks driving a fishery’s classification (i.e., the fishery is classified based on serious injuries and mortalities of a marine mammal stock greater than 50 percent [Category I], or greater than 1 percent and less

than 50 percent [Category II], of a stock's PBR) by a "1" after the stock's name.  
 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. Justification for classifying these

fisheries as a Category II is 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 (≥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 Bryde's whale, 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 Striped dolphin, 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	Estimated # of vessels/persons	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 $\geq$ 3.5 in and <14 in)	24	California sea lion, U.S. Long-beaked common dolphin, CA <sup>1</sup> 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
<b>PURSE SEINE FISHERIES:</b>		
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	63	Bottlenose dolphin, CA/OR/WA offshore <sup>1</sup> California sea lion, U.S. Harbor seal, CA
CA squid purse seine	71	Common dolphin, unknown Short-finned pilot whale, CA/OR/WA <sup>1</sup>



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
CA tuna purse seine <sup>2</sup>	10	None documented
<b>TRAWL FISHERIES:</b>		
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 Bering Sea transient <sup>1</sup> Minke whale, AK Ribbon seal, AK Spotted seal, AK Steller sea lion, Western U.S. <sup>1</sup>
<b>LONGLINE/SET LINE FISHERIES:</b>		
AK Bering Sea, Aleutian Islands Pacific cod longline	114	Killer whale, AK resident <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
<b>POT, RING NET, AND TRAP FISHERIES:</b>		
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific <sup>1</sup> Humpback whale, Western North Pacific <sup>1</sup>
CATEGORY III		
<b>GILLNET FISHERIES:</b>		
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 gillnet (mesh size <3.5 inches)	304	None documented
HI inshore gillnet	5	Bottlenose dolphin, HI Spinner dolphin, HI
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
<b>PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:</b>		

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 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
<b>DIP NET FISHERIES:</b>		
CA squid dip net	115	None documented
WA/OR smelt, herring dip net	119	None documented
<b>MARINE AQUACULTURE FISHERIES:</b>		
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
WA/OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
<b>TROLL FISHERIES:</b>		
AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, 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

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
Guam tuna troll	401	None documented
HI trolling, rod and reel	1,321	None documented
<b>LONGLINE/SET LINE FISHERIES:</b>		
AK Bering Sea, Aleutian Islands Greenland turbot longline	12	Killer whale, AK resident
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 (including 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
<b>TRAWL FISHERIES:</b>		
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.
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

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
WA/OR/CA groundfish trawl	160-180	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
<b>POT, RING NET, AND TRAP FISHERIES:</b>		
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	Gray whale, Eastern North Pacific Humpback 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
<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

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 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	0	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	0	None documented
CA sea urchin	583	None documented
HI black coral diving	1	None documented
HI fish pond	N/A	None documented
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
<b>COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:</b>		
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.

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 charter vessel	114	None documented
<b>LIVE FINFISH/SHELLFISH FISHERIES:</b>		
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, which 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, Gulf of Maine <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
<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, Northern GMX oceanic Bottlenose dolphin, Northern GMX continental shelf 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>		

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-Atlantic American lobster trap/pot	13,000	Fin whale, WNA Harbor seal, WNA Humpback whale, Gulf of Maine <sup>1</sup> Minke whale, Canadian east coast <sup>1</sup> North Atlantic right whale, WNA <sup>1</sup>
CATEGORY II		
<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
NC inshore gillnet	94	Bottlenose dolphin, WNA coastal <sup>1</sup>
Northeast anchored float gillnet <sup>2</sup>	133	Harbor seal, WNA Humpback whale, Gulf of Maine 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
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>
<b>TRAP/POT FISHERIES:</b>		
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
<b>PURSE SEINE FISHERIES:</b>		



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 Mexico menhaden purse seine	40-42	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
<b>HAUL/BEACH SEINE FISHERIES:</b>		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal <sup>1</sup>
NC long haul seine	33	Bottlenose dolphin, WNA coastal <sup>1</sup>
<b>STOP NET FISHERIES:</b>		
NC roe mullet stop net	13	Bottlenose dolphin, WNA coastal <sup>1</sup>
<b>POUND NET FISHERIES:</b>		
VA pound net	187	Bottlenose dolphin, WNA coastal <sup>1</sup>
CATEGORY III		
<b>GILLNET FISHERIES:</b>		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
DE River inshore gillnet	60	None documented
Long Island Sound inshore gillnet	20	None documented
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet	32	None documented
Southeast Atlantic inshore gillnet	unknown	None documented
<b>TRAWL FISHERIES:</b>		
Atlantic shellfish bottom trawl	972	None documented
Gulf of Mexico butterflyfish trawl	2	Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, Northern GMX continental shelf
Gulf of Mexico mixed species trawl	20	None documented
GA cannonball jellyfish trawl	1	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian Manatee, FL
<b>MARINE AQUACULTURE FISHERIES:</b>		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
<b>PURSE SEINE FISHERIES:</b>		
Gulf of Maine Atlantic herring purse seine	30	Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
FL west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal

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
U.S. Atlantic tuna purse seine	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
<b>LONGLINE/HOOK-AND-LINE FISHERIES:</b>		
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, Gulf of Maine
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	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX continental shelf
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
<b>TRAP/POT FISHERIES:</b>		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
FL 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
<b>STOP SEINE/WEIR/POUND NET FISHERIES:</b>		
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
<b>DREDGE FISHERIES:</b>		
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
<b>HAUL/BEACH SEINE FISHERIES:</b>		

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
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
<b>DIVE, HAND/MECHANICAL COLLECTION FISHERIES:</b>		
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
<b>COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:</b>		
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: DE - Delaware; FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; MA - Massachusetts; NC - North Carolina; VA - Virginia; WNA - Western North Atlantic

<sup>1</sup> - Fishery classified based on serious injuries and mortalities of this stock, which are greater than 1 percent of the stock's PBR

<sup>2</sup> - Fishery classified by analogy.

**Classification**

During the proposed rulemaking stage for this rule, 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. 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, approximately 350 fishers register directly with NMFS under the MMPA authorization program.

Though this final rule will affect approximately 350 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 direct economic costs associated with carrying that observer. Potential indirect costs to individual fishers required to take observers may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. However, effective monitoring will rotate observers among a limited number of vessels in a fishery at any given time and each vessel within an observed fishery has an equal probability of being requested to accommodate an observer. Therefore, the potential indirect costs to individual fishers are expected to be minimal since observer coverage would only be required for a small percentage of an individual's total annual fishing time. In addition, section 118 of the MMPA states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too

small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and 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 does 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 final 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.

Dated: November 19, 2007.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 061121304-7053-02; I.D. 112006B]

RIN 0648-AT87

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Republication of Gulf Red Snapper Interim Management Measures

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

**ACTION:** Temporary rule; republication of interim measures.

**SUMMARY:** This temporary rule republishes interim measures to reduce overfishing of Gulf red snapper that were previously implemented via a temporary rule published by NMFS on April 2, 2007, and extended through March 28, 2008, by a temporary rule published by NMFS on September 24, 2007. The interim measures reduce the commercial and recreational quotas for red snapper, reduce the commercial minimum size limit for red snapper, reduce the recreational bag limit for Gulf red snapper, prohibit the retention of red snapper under the bag limit for captain and crew of a vessel operating as a charter vessel or headboat, and establish a target level of reduction of shrimp trawl bycatch mortality of red snapper. The intended effect of this temporary rule is to reinstate the text of the interim measures in the Code of Federal Regulations that was inadvertently removed.

**DATES:** This rule is effective November 27, 2007 through March 28, 2008.

**ADDRESSES:** Copies of the final environmental impact statement (FEIS) and Record of Decision (ROD) prepared for the April 2, 2007, temporary final rule (72 FR 15617) are available from Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**SUPPLEMENTARY INFORMATION:** The red snapper fishery of the Gulf of Mexico is

managed under the Fishery Management Plan (FMP) for the Reef Fish Fishery of the Gulf of Mexico, and the shrimp fishery is managed under the FMP for the Shrimp Fishery of the Gulf of Mexico. The FMPs were prepared by the Gulf of Mexico Fishery Management Council (Council) and are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS issued a temporary rule (72 FR 15617, April 2, 2007) under section 305(c) of the Magnuson-Stevens Act, to implement interim measures to reduce fishing mortality on red snapper by reducing harvest and bycatch levels. Specifically, that rule: (1) reduced red snapper total allowable catch (TAC) from 9.12 million lb (4.14 million kg) to 6.5 million lb (2.9 million kg), whole weight, resulting in a commercial quota of 3.315 million lb (1.504 million kg) and a recreational quota of 3.185 million lb (1.445 million kg); (2) reduced the commercial minimum size limit for red snapper from 15 inches (38 cm) to 13 inches (33 cm) total length (TL); (3) reduced the daily recreational bag limit from four fish to two fish per person and prohibits the captain and crew of for-hire vessels (charter vessels and headboats) from retaining the recreational bag limit; and (4) established a goal to reduce red snapper bycatch mortality in the shrimp fishery to 50 percent of the bycatch mortality that occurred during 2001-2003. These measures remain necessary to address overfishing of the red snapper resource.

Under section 305(c)(3)(B) of the Magnuson-Stevens Act, NMFS may extend the effectiveness of interim measures for one additional period of not more than 186 days, provided the public has had an opportunity to comment on the interim measures and the Council is actively preparing proposed regulations to address the overfishing on a permanent basis. NMFS solicited public comments on the interim measures in a temporary proposed rule (71 FR 75220, December 14, 2006) and received numerous comments. These comments were summarized and NMFS's responses were provided in the temporary final rule (72 FR 15617, April 2, 2007). The Council prepared joint Amendment 27/14 to the Reef Fish and Shrimp FMPs in the Gulf of Mexico (Amendment 27/14) to address overfishing of red snapper. NMFS partially approved Amendment 27/14 on October 19, 2007. The approved portions of the amendment include additional measures to end overfishing and to rebuild the red snapper stock.