

TABLE 1 TO PARAGRAPH (b)—Continued

U.S. code citation	Civil monetary penalty description	Adjusted penalty amount 2020	Adjusted penalty amount 2021
49 U.S.C. 14901(d)(2)	Minimum penalty for each instance of transportation of household goods if broker provides estimate without carrier agreement.	16,258	16,450
49 U.S.C. 14901(d)(3)	Minimum penalty for each instance of transportation of household goods without being registered.	40,640	41,120
49 U.S.C. 14901(e)	Minimum penalty for each violation of a transportation rule	3,251	3,289
49 U.S.C. 14901(e)	Minimum penalty for each additional violation	8,128	8,224
49 U.S.C. 14903(a)	Maximum penalty for undercharge or overcharge of tariff rate, for each violation.	162,568	164,490
49 U.S.C. 14904(a)	For first violation, rebates at less than the rate in effect	325	329
49 U.S.C. 14904(a)	For all subsequent violations	407	412
49 U.S.C. 14904(b)(1)	Maximum penalty for first violation for undercharges by freight forwarders.	813	823
49 U.S.C. 14904(b)(1)	Maximum penalty for subsequent violations	3,251	3,289
49 U.S.C. 14904(b)(2)	Maximum penalty for other first violations under § 13702	813	823
49 U.S.C. 14904(b)(2)	Maximum penalty for subsequent violations	3,251	3,289
49 U.S.C. 14905(a)	Maximum penalty for each knowing violation of § 14103(a), and knowingly authorizing, consenting to, or permitting a violation of § 14103(a) or (b).	16,258	16,450
49 U.S.C. 14906	Minimum penalty for first attempt to evade regulation	2,226	2,252
49 U.S.C. 14906	Minimum amount for each subsequent attempt to evade regulation	5,562	5,628
49 U.S.C. 14907	Maximum penalty for recordkeeping/reporting violations	8,128	8,224
49 U.S.C. 14908(a)(2)	Maximum penalty for violation of § 14908(a)(1)	3,251	3,289
49 U.S.C. 14910	When another civil penalty is not specified under this part, for each violation, for each day.	813	823
49 U.S.C. 14915(a)(1)–(2)	Minimum penalty for holding a household goods shipment hostage, for each day.	12,919	13,072
49 U.S.C. 14916(c)(1)	Maximum penalty for each knowing violation under § 14916(a) for unlawful brokerage activities.	11,125	11,257
Pipeline Carrier Civil Penalties			
49 U.S.C. 16101(a)	Maximum penalty for violation of this part, for each day	8,128	8,224
49 U.S.C. 16101(b)(1), (4)	For each recordkeeping violation under § 15722, each day	813	823
49 U.S.C. 16101(b)(2), (4)	For each inspection violation liable under § 15722, each day	162	164
49 U.S.C. 16101(b)(3)–(4)	For each reporting violation under § 15723, each day	162	164
49 U.S.C. 16103(a)	Maximum penalty for improper disclosure of information	1,625	1,644

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 210108–0005]

RIN 0648–BJ72

List of Fisheries for 2021

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2021, as required by the Marine Mammal Protection Act (MMPA). The LOF for 2021 reflects new information on interactions between commercial

fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of mortality and serious injury of marine mammals that occurs incidental to each fishery. The classification of a fishery on 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 (TRP) requirements.

DATES: The effective date of this final rule is February 16, 2021.

ADDRESSES: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Jaclyn Taylor, Office of Protected Resources, 301–427–8402; Allison Rosner, Greater Atlantic Region, 978–281–9328; Jessica Powell, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 206–526–4740; Suzie Teerlink, Alaska Region, 907–

586–7240; Diana Kramer, Pacific Islands Region, 808–725–5167. 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:

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 mortality and serious injury of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on 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 (SARs) 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 (OSP). This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock. 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 will be placed in Category III (unless those fisheries interact with other stock(s) for 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: Tier 2 considers fishery-specific mortality and serious injury for a particular stock.

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 (*i.e.*, frequent incidental mortality and serious injury of marine mammals).

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 (*i.e.*,

occasional incidental mortality and serious injury of marine mammals).

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 (*i.e.*, a remote likelihood of or no known incidental mortality and serious injury of marine mammals).

Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086; August 30, 1995).

Because fisheries are classified 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 classified 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). Stocks driving a fishery's classification are denoted with a superscript "1" in Tables 1 and 2.

Other Criteria That May Be Considered

The tier analysis requires a minimum amount of data, and NMFS does not have sufficient data to perform a tier analysis on certain fisheries. Therefore, NMFS has classified certain fisheries by analogy to other fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, or according to factors discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995) and listed in the regulatory definition of a Category II fishery. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental mortality or serious injury is "occasional" 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 fishermen 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).

Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?

The LOF includes a list of marine mammal species and/or stocks incidentally killed or injured in each commercial fishery. The list of species and/or stocks incidentally killed or injured includes "serious" and "non-serious" documented injuries as described later in the *List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean* and *List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean* sections. To determine which species or stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs and injury determination reports. SARs are brief reports summarizing the status of each stock of marine mammals occurring in waters under U.S. jurisdiction, including information on the identity and geographic range of the stock, population statistics related to abundance, trend, and annual productivity, notable habitat concerns, and estimates of human-caused mortality and serious injury (M/SI) by source. 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 interaction with commercial fishing operations. The best available scientific information used in the SARs and reviewed for the 2021 LOF generally summarizes data from 2013–2017. NMFS also reviews other sources of new information, including injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.*, MMPA mortality/injury reports), and anecdotal reports from that time period. In some cases, more recent information may be available and used in the LOF.

For fisheries with observer coverage, species or stocks are generally removed from the list of marine mammal species and/or stocks incidentally killed or injured if no interactions are documented in the 5-year timeframe summarized in that year's LOF. For fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented interactions may be occurring (*e.g.*, fishery has low observer coverage and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific

fishery) species and stocks may be retained for longer than 5 years. For these fisheries, NMFS will review the other sources of information listed above and use its discretion to decide when it is appropriate to remove a species or stock.

Where does NMFS obtain information on the level of observer coverage in a fishery on the LOF?

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. Data obtained from the observer program and observer coverage levels are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. Starting with the 2005 SARs, each Pacific and Alaska SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including the observer coverage in those fisheries. For Atlantic fisheries, this information can be found in the LOF Fishery Fact Sheets. The SARs 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. Fishery information presented in the SARs' appendices and other resources referenced during the tier analysis may include: Level of observer coverage; target species; levels of fishing effort; spatial and temporal distribution of fishing effort; characteristics of fishing gear and operations; management and regulations; and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resources' website at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>. Information on observer coverage levels in Category I, II, and III fisheries can be found in the fishery fact sheets on the NMFS Office of Protected Resources' website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables>. Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: <https://www.fisheries.noaa.gov/national/fisheries-observers/national-observer-program>.

How do I find out if a specific fishery is in Category I, II, or III?

The LOF includes three tables that list all U.S. commercial fisheries by Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S. authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRT).

Are high seas fisheries included on the LOF?

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (e.g., trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 with an asterisk (*) after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2. HSFCA permits are valid for 5 years, during which time Fishery Management Plans (FMPs) can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely

higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008). Additional information about HSFCA permits can be found at <https://www.fisheries.noaa.gov/permit/high-seas-fishing-permits>.

Where can I find specific information on fisheries listed on the LOF?

Starting with the 2010 LOF, NMFS developed summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: When the fishery was added to the LOF; the basis for the fishery's initial classification; classification changes to the fishery; changes to the list of species and/or stocks incidentally killed or injured in the fishery; fishery gear and methods used; observer coverage levels; fishery management and regulation; and applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under "How Do I Find Out if a Specific Fishery is in Category I, II, or III?" on the NMFS Office of Protected Resources' website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries>, linked to the "List of Fisheries Summary" table. NMFS is developing similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets is taking significant time to complete. NMFS began posting Category III fishery fact sheets online with the LOF for 2016.

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 to lawfully take non-endangered and non-threatened marine mammals incidental to commercial fishing operations. 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, renew and receive my Marine Mammal Authorization Program authorization certificate?

NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials.

In the Pacific Islands, West Coast, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail or with their state or Federal license or permit at the time of issuance or renewal. In the Greater Atlantic and Southeast Regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year.

Vessel or gear owners who participate in fisheries in these regions and have not received authorization certificates by the beginning of the calendar year, or with renewed fishing licenses, must contact the appropriate NMFS Regional Office (see **FOR FURTHER INFORMATION**). Authorization certificates may also be obtained by visiting the MMAP website <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-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)). 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 license or 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 license or permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

In recognition of logistical challenges with certificate issuance related to the ongoing COVID-19 pandemic, the MMAP certificate issued in 2020 remains in effect, valid through

December 31, 2021, for vessel or gear owners participating in all Category I and II fisheries as of the final 2021 LOF. 2020 certificates may be retained or replacements downloaded from <https://go.usa.gov/xArUW>. Vessel or gear owners participating in previous Category III fisheries reclassified as a Category II fishery in this final 2021 LOF can obtain their MMAP certificate on our website <https://go.usa.gov/xArUW>.

Am I required to submit reports when I kill or injure 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 fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II, or III) within 48 hours of the end of the fishing trip or, in the case of non-vessel fisheries, fishing activity. "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.

Mortality/injury reporting forms and instructions for submitting forms to NMFS can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#reporting-a-death-or-injury-of-a-marine-mammal-during-commercial-fishing-operations> or by contacting the appropriate regional office (see **FOR FURTHER INFORMATION**). Forms may be submitted via any of the following means: (1) Online using the electronic form; (2) emailed as an attachment to nmfs.mireport@noaa.gov; (3) faxed to the NMFS Office of Protected Resources at 301-713-0376; or (4) mailed to the NMFS Office of Protected Resources (mailing address is provided on the postage-paid form that can be printed from the web address listed above). Reporting requirements and procedures are found in 50 CFR 229.6.

Am I required to take an observer aboard my vessel?

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their

vessel(s) upon request from NMFS. MMPA section 118 states that the Secretary is not required to place an observer on a vessel if the facilities for quartering an observer or performing observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; thereby authorizing the exemption of vessels too small to safely accommodate an observer from this requirement. However, U.S. Atlantic Ocean, Caribbean, or Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)) will not be exempted from observer requirements, regardless of their size. Observer requirements are found in 50 CFR 229.7.

Am I required to comply with any marine mammal TRP regulations?

Table 4 provides a list of fisheries affected by TRPs and TRTs. TRP regulations are found at 50 CFR 229.30 through 229.37. A description of each TRT and copies of each TRP can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-take-reduction-plans-and-teams>. It is the responsibility of fishery participants to comply with applicable take reduction regulations.

Where can I find more information about the LOF and the MMAP?

Information regarding the LOF and the MMAP, including registration procedures and forms; current and past LOFs; descriptions of each Category I and II fishery and some Category III fisheries; observer requirements; and marine mammal mortality/injury reporting forms and submittal procedures; may be obtained at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries>, or from any NMFS Regional Office at the addresses listed below:

NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, Attn: Allison Rosner;
 NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Jessica Powell;
 NMFS, West Coast Region, Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, Attn: Dan Lawson;

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

NMFS, Pacific Islands Regional Office, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818, Attn: Diana Kramer.

Sources of Information Reviewed for the 2021 LOF

NMFS reviewed the marine mammal incidental mortality and serious injury information presented in the SARs for all fisheries to determine whether changes in fishery classification are warranted. The 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 fishery operations 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 established by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding and entanglement data, observer program data, fishermen self-reports, reports to the SRGs, conference papers, FMPs, and ESA documents.

The LOF for 2021 was based on, among other things, stranding data; fishermen self-reports; and SARs, primarily the 2019 SARs, which are based on data from 2013–2017. The SARs referenced in this LOF include: 2016 (82 FR 29039; June 27, 2017), 2018 (84 FR 28489; June 19, 2019), and 2019 (84 FR 65353; November 27, 2019). The SARs are available at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>.

Comments and Responses

NMFS received nine comment letters on the proposed LOF for 2021 (85 FR 59258; September 21, 2020). Comments were received from members of the public, Atlantic Offshore Lobstermen's Association (AOLA), Freezer Longline Coalition (FLC), Hawaii Longline Association (HLA), Maine Lobstermen's Association (MLA), Massachusetts Division of Marine Fisheries (MA DMF), Marine Mammal Commission (Commission) and Whale Safe USA. Responses to substantive comments are

below; comments on actions not related to the LOF are not included.

General Comments

Comment 1: A commenter recommends that NMFS require Category III fisheries to accommodate observers aboard vessels in order to expand data collection on marine mammal bycatch in fisheries.

Response: MMPA section 118 requires individuals participating in a Category I or II fishery to accommodate an observer aboard their vessel(s) upon request from NMFS. In addition, MMPA section 118(d)(7) provides NMFS, with the consent by the vessel owner, the ability to place an observer on board a vessel participating in Category III fisheries (50 CFR 229.7(d)). The MMPA and implementing regulations (50 CFR 229.6) also include a marine mammal mortality and injury reporting requirement for all Category I, II and III fisheries. Any vessel owner or operator participating in a fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations within 48 hours of the end of the fishing trip.

Comments on Commercial Fisheries in the Pacific Ocean

Comment 2: FLC recommends NMFS reclassify the AK Bering Sea, Aleutian Islands (BSAI) Pacific cod longline fishery from a Category II to Category III. They note that the following marine mammal stocks are included on the list of species/stocks incidentally killed or injured in the BSAI Pacific cod longline fishery: Killer whale (Eastern North Pacific AK resident); killer whale (Gulf of Alaska, BSAI transient); Northern fur seal (Eastern Pacific); spotted seal (AK) and Steller sea lion (Western U.S.). FLC provides evidence that from 2013 through 2017 the only marine mammal stock incidentally killed or injured in the BSAI Pacific cod longline fishery was the Western U.S. stock of Steller sea lions and these did not result in annual M/SI greater than 1 percent of the stock's PBR level.

FLC also states that the BSAI Pacific cod longline fishery is currently classified as a Category II based on a killer whale M/SI in 2012. They note that this M/SI is assigned to both the resident and transient stocks of killer whales and is outside the 5 year timeframe (2013–2017) of the 2021 LOF. Therefore, FLC recommends that the BSAI Pacific cod longline fishery be reclassified as a Category III fishery.

Response: NMFS reviewed the information provided and agrees with FLC. One killer whale (Gulf of Alaska,

BSAI transient stock) M/SI was driving the Category II classification of the BSAI Pacific cod longline fishery. This killer whale M/SI occurred in 2012, and no additional M/SI have been observed or reported for the 2013–2017 data analysis timeframe for this fishery. Therefore, NMFS reclassifies the AK BSAI Pacific cod longline fishery from a Category II to a Category III fishery in this final rule. NMFS also removes both the Eastern North Pacific AK resident stock and Gulf of Alaska, BSAI transient stock of killer whales from the list of species and/or stocks incidentally killed or injured in the BSAI Pacific cod longline fishery.

Comment 3: FLC recommends NMFS re-evaluate how a single marine mammal M/SI is assigned to multiple stocks when stock ranges overlap. They state that the M/SI should be distributed between stocks based on the relative proportion of the population of the two stocks combined.

As noted in the 2016 SAR (Muto *et al.*, 2017), the 2012 killer whale M/SI in the BSAI Pacific cod longline fishery was assigned to both the resident and transient stocks of killer whale, given no genetic samples were collected and the overlap in the range of the two stocks in Alaska waters. FLC further states that NMFS attributes the single M/SI to both stocks equally. However, the probability of encountering either stock is not 100 percent, but proportional to the relative population of the stocks throughout the range. The commenter notes that revising the single M/SI between both killer whale stocks (based on probability of encounter) would distribute the single 2012 M/SI in the BSAI Pacific cod longline fishery from 100 percent for both stocks to 80 percent to the resident stock and 20 percent to the transient stock.

Response: The SARs are drafted according to NMFS' "Guidelines for Preparing Stock Assessment Reports Pursuant to the 1994 Amendments to the MMPA" (NMFS 2016, 02–204–01). This provides directives for consistently assigning M/SI to stocks, including times when the M/SI is documented in an area of overlapping stocks. Because there were no data to indicate specific stock or reliable data that could be used to partition the 2012 killer whale M/SI, the M/SI was assigned to both stocks as prescribed by NMFS' "Guidelines for Preparing Stock Assessment Reports Pursuant to the 1994 Amendments to the MMPA".

Comment 4: FLC requests that NMFS update the LOF fishery fact sheet for the Category II BSAI Pacific cod longline fishery. The LOF fishery fact sheet for the BSAI Pacific cod longline fishery

has an incorrect description for the observer coverage in both the catcher processor and catcher vessel longline sectors. The description of observer coverage included in the LOF fishery fact sheet is outdated and does not reflect the Observer Program structuring for catcher processor and catcher vessels sectors since 2012.

Response: NMFS thanks FLC for bringing to our attention that the observer coverage information in the AK BSAI Pacific cod longline fishery fact sheet on NMFS' website needs updating. The fishery fact sheets summarize LOF classification information for the public and we will review and correct this error.

Comment 5: The Commission restates a previous comment and recommends NMFS reclassify both the Category II SE Alaska salmon drift gillnet and Yakutat salmon set gillnet fisheries as Category I fisheries. The Commission previously noted that the 2016 SAR for the Southeast Alaska stock of harbor porpoise reported a population-size estimate of 975 and an estimated minimum population size (N_{min}) of 896, which produced a PBR of 8.9 animals. That 2016 SAR also reported a total annual M/SI estimate of 34 animals for the two fisheries combined. The Commission states that the estimated annual M/SI has not changed, and although the stock's PBR increased to 12 in the 2019 SAR, fishery-related M/SI still exceed PBR by nearly threefold.

The Commission states that the clearer case can be made for reclassifying the Category II SE Alaska salmon drift gillnet fishery as a Category I fishery. They note that the estimated annual harbor porpoise M/SI in the SE Alaska salmon drift gillnet fishery included the 2019 SAR is 12 animals which equals PBR for the stock and exceeds the Category I classification threshold of 50 percent of PBR. The Commission continues to state that this M/SI estimate is based on data collected in salmon management areas 6–8 in 2012 and 2013, and is a conservative estimate since salmon management areas 6–8 comprise only a small portion of the total area surveyed.

The Commission notes that it is more difficult to address the harbor porpoise M/SI in Category II Yakutat salmon set gillnet because there is a geographical disconnect between where observer data was collected and the population surveys were conducted. Thus, the comparison of the estimated annual M/SI does not provide a meaningful basis for classifying this fishery, given the likely population structure found in the Southeast Alaska (SEAK) harbor porpoise stock, as described in the 2019

SAR. Therefore, the Commission reiterates its recommendation that NMFS reclassify the SE Alaska salmon drift gillnet as a Category I fishery.

Response: This comment has been addressed previously (see 85 FR 21079, April 16, 2020). The PBR level for the SEAK harbor porpoise stock was estimated based on a survey that covered only a portion of the currently-recognized distribution of this stock, and it included commercial fishery M/SI that occurred far north of the surveyed areas. Over the last year, NMFS has made substantial progress in analyzing genetic data to resolve stock structure of harbor porpoise in Southeast Alaska. Once finalized, the analysis of these data will be helpful in addressing management concerns related to SEAK harbor porpoise and effects from commercial fishing. NMFS continues to pursue options for additional observer coverage to collect more recent and more geographically comprehensive data on mortality in Alaska's state fisheries, and we will prioritize observation of the Southeast Alaska drift gillnet fishery. For the 2021 LOF, NMFS retains the Category II classification for the Yakutat salmon set gillnet and SE Alaska salmon drift gillnet fisheries until more data are available.

Comment 6: HLA restates a previous comment recommending NMFS remove the Main Hawaiian Islands (MHI) insular and Northwestern Hawaiian Islands (NWHI) stocks of false killer whales from the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery. HLA notes that (a) the False Killer Whale Take Reduction Plan (FKWTRP) closed the deep-set longline fishery for almost the entire range of the MHI insular stock, (b) since this change was made in 2013 there have been no false killer whale interactions in the fishery, and (c) there has never been a deep-set longline fishery interaction in the very small area of the stocks' range where the fishery operates. The commenter also states that no information has been presented to the False Killer Whale TRT or the Pacific Scientific Review Group suggesting any false killer whale interactions in the deep-set fishery can reliably be attributed to the Insular or NWHI stocks of false killer whales. HLA requests that NMFS remove the MHI insular and NWHI stocks of false killer whales from the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery.

Response: This comment has been addressed previously (see 84 FR 22051,

May 16, 2019; 85 FR 21079, April 16, 2020). The MHI insular stock of false killer whales have been documented via telemetry to move far enough offshore to reach longline fishing areas (Bradford *et al.*, 2015). The MHI insular, Hawaii pelagic, and NWHI stocks have partially overlapping ranges. MHI insular false killer whales have been satellite tracked as far as 115 km from the MHI, while pelagic stock animals have been tracked to within 11 kilometers (km) of the MHI and throughout the NWHI. Thus, M/SI of false killer whales of unknown stock within the stock overlap zones must be prorated to MHI insular, pelagic, or NWHI stocks. Annual bycatch estimates are prorated using a process outlined in detail in the SARs, which account for M/SI that occur within the MHI-pelagic or NWHI-pelagic overlap zones.

For observed fisheries with evidence indicating that undocumented interactions may be occurring (*e.g.*, fishery has evidence of fisheries interactions that cannot be attributed to a specific fishery, and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery), stocks may be retained on the LOF for longer than 5 years. For these fisheries, NMFS will review the other sources of relevant information to determine when it is appropriate to remove a species or stock from the LOF. As described in the 2019 LOF (84 FR 22051, May 16, 2019), six false killer whale M/SI incidental to the deep-set longline fishery were observed inside the exclusive economic zone (EEZ) around Hawaii, including three that occurred close to the outer boundary of the Main Hawaiian Islands Longline Fishing Prohibited Area, in close proximity to the outer boundary of the MHI Insular false killer whale stocks' range. Also, MHI Insular false killer whale range overlaps with areas that are open to deep-set longline fishing and MHI Insular false killer whales have been documented with injuries consistent with fisheries interactions that have not been attributed to a specific fishery (Baird *et al.*, 2014). Additionally, in August 2020, NMFS reopened the Southern Exclusion Zone to Hawaii deep-set longline fishing (85 FR 50959, August 19, 2020).

In addition to the SARs, NMFS also reviews other sources of new information for the LOF, including injury determination reports, bycatch estimation reports, and observer data. In some cases, more recent information may be available and used in the LOF. In January 2019, there was an observed mortality of a false killer whale incidental to the Hawaii deep-set longline fishery that occurred within the

range of the NWHI stock. Therefore, NMFS retains both the MHI insular and NWHI false killer whale stocks on the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery.

Comment 7: HLA restates a previous comment opposing the inclusion of the Hawaii stocks of *Kogia* species (pygmy or dwarf sperm whales) on the list of species and/or stocks incidentally killed or injured in the Category I HI deep-set longline fishery. HLA requests that NMFS remove *Kogia* species from the list of species and/or stocks incidentally killed or injured in the deep-set longline fishery because SARs for the two stock does not include M/SI in the deep-set fishery.

Response: This comment has been addressed previously (see 84 FR 22051, May 16, 2019). The 2021 LOF generally summarizes data from 2013–2017, and in addition to the SARs, the LOF also reviews other sources of information, including injury determination reports and observer data. In February 2014, there was an observed interaction with a pygmy sperm whale (*Kogia breviceps*) in the Category I HI deep-set longline fishery. Therefore, NMFS retains *Kogia* on the list of species and/or stocks incidentally killed or injured in the Category I HI deep-set longline fishery.

Comment 8: HLA recommends NMFS remove the Central North Pacific humpback whale stock from the list of species and/or stocks incidentally killed or injured in the Category II HI shallow-set longline fishery. HLA states that the proposed 2021 LOF includes the Central North Pacific stock of humpback whales on the list of species and/or stocks incidentally killed or injured from the Category II HI shallow-set longline fishery, but the most recent SAR does not identify M/SI in the shallow-set fishery. The HI shallow-set longline fishery has 100 percent observer coverage and therefore, the Central North Pacific stock of humpback whale stock should be removed the list of species and/or stocks incidentally killed or injured in the Category II HI shallow-set longline fishery.

Response: In addition to the M/SI included in the SARs, the LOF references data from injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports, and anecdotal reports. In March 2015, there was an observed humpback whale, Central North Pacific stock, injury in the Category II Hawaii shallow-set longline fishery. The injury was determined to be non-serious. Due to the observed injury,

the Central North Pacific stock of humpback whale is retained on the list of species and/or stocks incidentally killed or injured in the Category II HI shallow-set longline fishery.

Comment 9: The Commission recommends that NMFS reclassify the Category III Hawaii troll fishery as a Category II fishery. The Commission states that NMFS proposed to reclassify the Category III Hawaii charter vessel fishery, which is primarily a troll fishery, and the HI trolling, rod and reel fisheries as Category II fisheries in the 2012 LOF (76 FR 37716, June 28, 2011). In the proposed rule, NMFS based the proposed change on reports of hooking spotted dolphins, and information on the prevalence of vessels from these fisheries targeting Pantropical spotted dolphin pods. NMFS estimated that M/SI would be, at a minimum, approximately 2 percent of PBR, justifying the Category II classifications for both fisheries. The Commission notes the final 2012 LOF (76 FR 73912, November 29, 2011) did not finalize the fishery proposed reclassifications.

The Commission states that implementing regulations allow for NMFS, in the absence of reliable estimates of the M/SI, to determine whether M/SI occurs ‘not at all or with a remote likelihood’ (Category III), ‘occasionally’ (Category II), or ‘frequently’ based on analogy to similar fisheries. This is the approach NMFS took this approach in 2012 proposed LOF.

The Commission also notes that the case for reclassifying the troll fisheries as Category II fisheries has strengthened since serious injuries due to hooking or entanglement in fishing line have been documented, and reliable estimates of rates of troll vessels fishing in and through spotted dolphin groups have been published (Baird and Webster, 2020). In addition, the spotted dolphin stock considered in 2011, was later split into four stocks (three insular and one pelagic) in the 2013 SAR, and each of the insular stocks is likely to have a smaller PBR than the estimates used in 2012 proposed LOF. Given NMFS’s assessment in 2012 proposed LOF that interactions were likely ‘occasional’, combined with more recent information, the Commission recommends that NMFS reclassify the Category III Hawaii troll fishery as a Category II fishery.

Response: As noted by the Commission, there are four stocks of pantropical spotted dolphins in the Hawaii Islands region: Oahu stock, 4-Islands stock, Hawaii Island stock, and Hawaii pelagic stock. In 2014, one pantropical spotted dolphin from the Hawaii Island stock was observed

hooked above the jaw and trailing 8–10 feet of fishing line (Bradford and Lyman, 2018). In 2017, a spotted dolphin from the 4-Islands stock was observed with a band of debris around its rostrum preventing it from opening its mouth (Bradford and Lyman, 2019). Both of these injuries are considered serious injuries and the responsible fishery is not known for either case. In addition, of the four pantropical spotted dolphin stocks, only the Hawaii pelagic stock has a minimum population estimate and resulting PBR.

Without known M/SI attributed to the HI troll fishery, and a minimum population estimate and PBR for only one of the four stocks, we evaluated classification of the fishery by analogy. However, in reviewing available data, there are no documented mortalities or injuries of pantropical spotted dolphins in similar fisheries. There are no current data on interactions with pantropical dolphins (or other dolphin species) in any other Pacific Ocean commercial troll fisheries. In other stocks of pantropical dolphins, the only documented fishery-related M/SI in the Northern Gulf of Mexico stock of pantropical are incidental to the pelagic longline fishery (2015 SAR). The Western North Atlantic stock of pantropical spotted dolphins’ total annual estimated fishery-related M/SI is presumed to be zero, as there were no reports of mortalities or serious injuries (2019 SAR). There are no documented interactions with pantropical spotted dolphins in commercial troll fisheries on the high seas (2020 LOF). Therefore, the HI troll fishery cannot be classified by analogy to other fisheries that use similar fishing techniques that are known to cause mortality or serious injury of pantropical spotted dolphins.

The mentioned study, (Baird and Webster, 2020) presented findings on the magnitude and nature of associations between fishing vessels and pantropical spotted dolphin stocks. The study did not estimate mortality or injury rates incidental to fisheries. Results of the study indicated that there is a high frequency of associations between troll and rod and reel fishing, and pantropical spotted dolphins, and in particular with the Hawaii Island stock. This information suggests hookings and/or entanglements may occur, and the fishing technique of trolling through groups and repositioning presents a heightened risk of hooking or entanglement to pantropical spotted dolphins. However, this information alone does not provide sufficient evidence with which to conclude that spotted dolphins are being seriously injured or killed on an

“occasional basis” as necessary for a Category II fishery classification. Therefore, NMFS is retaining the Category III classification of the Hawaii troll fishery.

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

Comment 10: MLA states that NMFS has the flexibility to consider a variety of criteria, such as differences in gear and fishing techniques, and the distribution of endangered stocks relative to individual fisheries when classifying fisheries on the LOF. The commenter notes that the Maine state waters lobster fishery is managed and enforced by the state of Maine. While the Federal waters portion of the Maine lobster fishery is managed through the Atlantic States Marine Fisheries Commission as part of Lobster Management Area 1, it is also subject to further regulation and enforcement by the state of Maine through the Lobster Management Policy Councils. In addition, Maine’s state and Federal waters lobstermen must declare a lobster zone and are required to fish the majority of gear in their home zone, limiting the spatial footprint of where individual lobstermen can set gear. MLA states that this requirement differentiates the Maine lobster fishery from all other lobster fisheries throughout the Northeast and mid-Atlantic.

Response: NMFS agrees that the Agency has the flexibility to separate out individual fisheries where it is appropriate; however, the commenter has not presented adequate information to substantiate any difference in risk that Maine state and Federal lobster fisheries pose to North Atlantic right whales, or other large whale species, that would warrant a current change in classification for these fisheries. As stated in the 2020 Final LOF (85 FR 21079, April 16, 2020), fisheries are classified based on the gear types used, how the gear is fished, and the behavior of the fishery related to the risk to marine mammals. Multiple states participate in the Northeast/mid-Atlantic American lobster trap/pot fishery, using a wide variety of gear and gear configurations throughout a large portion of coastal waters. While we recognize this variety within the fishery at large, there are not clear boundaries to divide gear use across the wider area as suggested by this comment. Importantly, the state of Maine does not use unique gear configurations from other states and gear configurations within Maine’s waters are not uniform or divided across the geographic

boundaries (*i.e.*, exemption lines) that MLA has identified. Further, gear marking and right whale monitoring efforts throughout Maine waters are insufficient to determine that the gear or area presents a different risk to large whales. Below we provide further detail as to why the information presented by the MLA is insufficient for the requested changes. At this time, we do not have enough information to suggest Maine’s fisheries should be split from the Northeast/mid-Atlantic American lobster trap/pot fishery, because the gear used in Maine waters is not unique from other states.

While NMFS appreciates the state of Maine’s efforts to manage the footprint of where individual lobstermen may set their gear, NMFS must look at the risk that the gear itself poses to large whales, particularly North Atlantic right whales. Current Maine state lobster management does not represent unique gear characteristics (*e.g.*, the use of weak rope exclusively or exclusion of vertical lines). In non-exempted waters, risk reduction can be calculated based on implemented changes to gear configurations, and if that risk reduction is substantial enough, NMFS could revisit the fishery classification in a future LOF.

Comment 11: MLA states that the NMFS Category I Northeast/mid-Atlantic American lobster trap/pot fishery does not accurately capture marine mammal interactions and risk. MLA recommends NMFS classify Maine’s state and Federal water’s lobster fisheries as unique fisheries, separate from the Category I Northeast/mid-Atlantic American lobster trap/pot fishery.

The commenter notes that in the absence of sufficient data to properly classify all fisheries, the MMPA provides that NMFS may evaluate 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 fishermen reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries. MLA further states that there are several factors with disparity among the Northeast and mid-Atlantic lobster fisheries, as well as significant differences in potential overlap with North Atlantic right whales. These differences among the lobster fisheries include: Fishing techniques, gear used, seasons and areas fished, fishermen’s observations of right whales and distribution of marine mammals. MLA alleges that based on these factors, the

lobster fishery prosecuted close to shore in Maine is significantly different than lobster fisheries which occur in offshore Lobster Management Area 3 or off of New Jersey.

MLA also alleges that Maine’s state and Federal lobster fisheries do not meet the criteria of a Category I fishery under the MMPA. MLA recommends NMFS reclassify the Maine state waters lobster fishery as Category III fishery since there are no documented serious injuries or mortalities with this fishery, and NMFS determined that regulating the waters exempt from the Atlantic Large Whale Take Reduction Plan (ALWTRP) would have no significant benefit to large whales. MLA also recommends NMFS reclassify the Maine Federal waters lobster fishery as Category II fishery. MLA alleges there are no documented M/SI in the Maine Federal lobster fishery, but the Category II classification may be warranted under an abundance of precaution that a future interaction could occur due to the offshore migration of North Atlantic right whales.

MLA states that according to the 2019 North Atlantic right whale SAR, PBR is 0.8, and M/SI for commercial fisheries is 5.55. MLA’s further analysis shows zero M/SI attributed to the Maine lobster fishery over this most recent 5 year period, while there were six documented cases in Canadian trap/pot fisheries. In addition, MLA alleges, there has been only one right whale entangled in Maine lobster gear in April 2002, and the entanglement was determined to be a non-serious injury. Maine gear was involved in a second case in 2004, but it was not the primary entangling gear in this case. The commenter states that there are four additional trap/pot entanglement cases that resulted in right whale M/SI for which a fishery was not determined and, therefore, for which the Maine lobster fishery cannot be completely ruled out. However, a close look at these cases reveals that the entangling gear is no longer fished, efforts to trace registration numbers to U.S. fishery were unsuccessful, or a Maine fishery was explicitly ruled out.

Response: NMFS uses the classification criteria described in the preamble to classify fisheries as Category I, Category II, or Category III. As noted, a fishery is classified under Category I if the annual M/SI of a stock in a given fishery is greater than or equal to 50 percent of the stock’s PBR level. Additional details regarding categorization of fisheries is provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086; August 30, 1995).

As noted in the section of this rule and the LOF proposed rule describing how NMFS determines which species or stocks are included as incidentally killed or injured in a fishery, for fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented interactions may be occurring (e.g., fishery has evidence of fisheries interactions that cannot be attributed to a specific fishery, and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery), stocks may be retained on the LOF for longer than 5 years. For these fisheries, NMFS will review the other sources of relevant information to determine when it is appropriate to remove a species or stock from the LOF.

At this time, we consider it appropriate to retain North Atlantic right whales as a species listed as driving the classification of the Northeast/mid-Atlantic lobster trap/pot fishery given that PBR is 0.8 and the further detail provided below, which reiterates responses provided in the 2020 Final LOF (85 FR 21079, April 16, 2020).

The commenter cites four cases of unknown entanglements they believe explicitly rule out Maine lobster fisheries from the origin of entanglement. However, the evidence presented is not sufficient to draw these conclusions. In one of the commenter's cited cases (E43-12/RW 4193), red tracers were identified in the recovered gear. Red tracers are indicative of the gear marking scheme required for the ALWTRP Northern Inshore Trap/Pot fishery management area, a management area that overlaps Maine, New Hampshire, and Massachusetts state waters. Therefore, it cannot be ruled out that the entanglement may have occurred off the coast of Maine in non-exempt waters. An additional case from 2011, previously noted in our 2020 Final LOF response to comments (85 FR 21079, April 16, 2020) but not mentioned in MLA's comment, also included recovered gear with these red tracers, though the location of that entanglement remains unknown (E11-11/RW 4040). Therefore, Maine lobster trap/pot fisheries cannot be ruled out as the potential origin for entanglements with undetermined origins.

We also note that two additional entanglements have been identified as Massachusetts lobster trap/pot entanglements (E36-16/RW 3623 and E25-09). This is relevant to the discussion since Maine state and Federal lobster fisheries are functionally equivalent to gear found in these

entanglements; and, therefore, gear fished in Maine presents similar risks.

While floating groundline is prohibited in ALWTRP non-exempt management areas, there are waters along the east coast (including off the coast of Maine) that are exempted from this ALWTRP requirement. Therefore, the recovery of floating groundline from an entanglement does not explicitly rule out Maine lobster fisheries. For example, in case E25-10/RW 3911, the gear analysis found "wire mesh is likely the remains of wire traps that parted off from themselves. This wire mesh, along with the 7/16 inch poly and associated gangions, is consistent with gear used in trap/pot fisheries conducted along the east coast of the U.S. and Canada" (NMFS 2010 Large Whale Entanglement Report), which is consistent with some gear fished in exempted waters. Additionally, unless a rope diameter is explicitly prohibited in an area, rope diameter does not rule out the potential for an entanglement to have occurred in Maine waters, even if it does not represent the majority's normal fishing practices. Therefore, the 9/16 inch float rope that was recovered from E01-09/RW 3311, again, does not explicitly rule out Maine lobster fisheries.

With this request, the commenter is also not taking into consideration the high percentage of unidentified entanglements that are both first sighted in the U.S. and in Canada. Over the past 5 years, there have been 4.15 M/SI entanglements documented annually where the origin of the entanglement is unknown (Hayes *et al.*, 2020).

The sample size of recovered gear from entanglements is small and much of the retrieved gear is unmarked and cannot be attributed to a particular location. Currently, the state of Maine does not require gear marking in ALWTRP exempted areas. The lack of marks on retrieved gear may indicate the current marking scheme is inadequate, or that entanglements are occurring in areas where gear is not currently marked, such as international waters or current exempted areas. The state is currently pursuing a gear marking regime in these exempted waters that may provide additional data about entanglement risk in these areas in the future.

The commenter alleges "There are zero instances of Maine lobster gear associated with a right whale serious injury or mortality in any data set, and only one known entanglement where Maine lobster was the primary entangling gear in 2002 resulting in non-serious injury determination." We recognize that there has only been one confirmed mortality (in 2012) in

identified U.S. trap/pot gear in the past decade. Those cases where we could identify lobster gear from right whale entanglements during the past 10 years were determined to result in non-serious injuries. However, there have been a number of life-threatening entanglements since 2010 that have resulted in a non-serious injury due to disentanglement intervention. (Henry *et al.*, 2019). According to NMFS' "Process for Distinguishing Serious from Non-Serious Injury of Marine Mammals (NMFS 2015, 02-238-01)," cases that would have been serious injuries prior to disentanglement are not counted against PBR in the SAR, but they are included in the recorded takes for the LOF and associated management measures. Aerial surveys, whale watching boats, the presence of other fisheries, and the presence and associated outreach by a disentanglement team contribute to the higher reporting of entanglement sightings in certain areas (i.e., Massachusetts) than in Maine state and offshore waters; we cannot conclude that risk is nonexistent in other areas where entanglements are not observed. With 85 percent of all observed right whales exhibiting entanglement scars, it is likely that entanglements are indeed occurring in areas where entanglements have not yet been observed and/or reported.

NMFS will continue to annually evaluate marine mammal interactions and risk posed by a variety of gear types and fisheries through the LOF process. As stated previously, should information suggest that unique gear characteristics have lowered the risk of interaction in a particular geographically unique portion of a fishery, NMFS will evaluate to determine if the risk reduction is sufficient for separating the fishery out from the broader, current, classification of the Category I Northeast/mid-Atlantic American lobster trap/pot fishery.

As stated above, we find that there is insufficient information to suggest that Maine's fisheries should be split from the Northeast/mid-Atlantic American lobster trap/pot fishery because the gear used in Maine waters and the manner in which the gear is used are not unique from other states. Further, we maintain that entanglement data indicate that the gear used across this fishery remains a risk to right whales. Should Maine fisheries make significant changes to their gear configurations that differentiate these fisheries from other state and Federal lobster trap/pot fisheries, such as eliminating vertical lines, NMFS will reconsider this decision.

Comment 12: AOLA expresses concern that data used in the LOF do not represent the current conditions of the Category I Northeast/mid-Atlantic American lobster trap/pot fishery nor marine mammal stocks. The commenter notes that the primary information used in the 2021 LOF comes from 2019 SARs, which are based on data from 2013–2017. Yet since 2013, the northwest Atlantic has undergone considerable climatic changes that have influenced the distributions of marine mammals and their prey. AOLA further states that the 2014 ALWTRP regulations as well as the American lobster fishery management plan regulations, reduced vertical lines and enhanced gear marking in the fishery. AOLA requests NMFS incorporate more timely data and recent information into the 2021 LOF.

Response: NMFS agrees that the best available scientific information is important for assessing the risk fisheries pose to marine mammal stocks. NMFS uses the best available scientific information to prepare the annual LOF. This includes relying on the SARs, which are peer reviewed by the U.S. Atlantic, Gulf of Mexico, and Caribbean Scientific Review Group. The MMPA established this SRG, along with two others, to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues. We recognize that this peer review process takes additional time to ensure that the best available are used to inform the LOF. However, the SARs generally provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations; there may also be more recent reports that include bycatch estimates.

Comment 13: AOLA expresses concern with how NMFS assigns M/SI when the origin of entanglement is unknown. AOLA states that according to the 2019 North Atlantic right whale SAR the 5-year mean estimated M/SI from entanglements is 5.55. Of those, 0.2 were attributed to U.S. fisheries, 1.2 to Canadian fisheries, and the remaining 4.15 were undetermined. The commenter notes that NMFS splits undetermined North Atlantic right whale M/SI evenly between the two countries. However, 86 percent of known entanglements were in Canadian gear. AOLA recommends NMFS split undetermined North Atlantic right whale M/SI between the two countries based on the percentage of known entanglements from each country and this prorated distribution of

M/SI should be used when classifying fisheries on the LOF.

Response: For determining a fishery's classification on the LOF, NMFS must assess the M/SI with respect to a stock's PBR. See response to comment #11 above about M/SI of right whales that is attributed to the Northeast/mid-Atlantic American lobster trap/pot fishery.

With respect to the current unknown North Atlantic right whale M/SI being assumed to be divided between both Canada and U.S. equally, this was a scenario that NMFS generated to support ALWTRT deliberations and is not used for classifying fisheries on the MMPA LOF. Given the additional regulatory requirements for Category I and II fisheries, NMFS uses known M/SI that can be attributed to a specific fishery for LOF analysis.

Comment 14: AOLA expresses concern over the perceived lack of parity when assessing the impacts of fisheries on marine mammals. AOLA understands that with limited observer coverage and data gaps there is a level of subjectivity into the LOF classification process; however, the process should be equal among fisheries. The commenter notes that the Northeast/mid-Atlantic American lobster trap/pot fishery is classified as a Category I fishery for North Atlantic right whales, yet there has been only one confirmed mortality in American lobster trap/pot gear in the past decade (2012) and no documented serious injuries (as stated in the 2020 LOF final rule). In the 2020 LOF final rule, NMFS cites all U.S. undetermined M/SI, potential M/SI prevented by intervention, and North Atlantic right whale entanglement scarring rates as data used for the Category I classification of the Northeast/mid-Atlantic American lobster trap/pot fishery. AOLA recommends NMFS take a more equitable approach when assessing entanglement risk across fisheries, countries, and non-fishery sources, and also notes this would assist in assuring fishermen are treated fairly.

Response: The LOF is the annual process NMFS conducts to place all U.S. commercial fisheries into one of three categories based on the level of incidental mortality and serious injury of marine mammals occurring in each fishery. See response to comment #11 above about how cases that would have been serious injuries prior to disentanglement are not counted against PBR in the SAR, but are included in the LOF classification process.

For fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented interactions may be occurring (e.g.,

fishery has low observer coverage and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery), NMFS uses the best available data to inform the LOF; thus, data older than 5 years may be used to retain a fishery classification or the list of species and stocks killed/injured incidental to a fishery. For these fisheries, NMFS will review the other sources of information listed above and use its discretion to decide when it is appropriate to remove a species or stock.

The assessment of large whale M/SI in fisheries with limited observer coverage remains a considerable challenge compared to other gear types that interact with pinniped or small cetaceans. In fisheries with sufficient observer coverage, NMFS extrapolates annual M/SI estimates for bycaught species. However, large whale fishery interaction assessments are dependent on direct counts of entangled whales, not the fishery per se. This observed count of entanglements is not representative of total fishery-related M/SI that goes undetected or unattributed to a particular cause, and therefore represents the minimum M/SI. A method to assign cause to these unknown, as well as undetected mortalities, while addressing country entanglement of origin, is currently under development (Hayes *et al.*, 2020). When these estimations become available, NMFS will solicit public comment through the SAR publication process.

Comment 15: MA DMF recommends NMFS reclassify the Massachusetts state waters lobster trap/pot fishery as its own non-Category I fishery, separate from the Category I Northeast/mid-Atlantic American lobster trap/pot fishery based on the gear restrictions and large whale conservation programs that are unique to Massachusetts. They note that the state of Massachusetts has a number of actions currently in place, as well as a number of additional actions that will be in place for the 2021 fishing season, that distinguish the Massachusetts state lobster trap/pot fishery as unique from the rest of the Category I Northeast/mid-Atlantic American lobster trap/pot fishery. MA DMF states that they are the only state lobster trap/trap fishery implementing the following actions either currently or in the future: (1) Lobster trap/pot fishery closure from February 1st to April 30th (currently in place for the Massachusetts Bay Restricted Area, proposed closure of all state waters beginning February 1, 2021); (2) dynamic extension of the lobster trap/pot fishery closure to ensure

safe passage of right whales from our waters prior to fixed gear being set (currently in place for the Massachusetts Bay Restricted Area, proposed for all state waters beginning February 1, 2021); (3) ban use of vertical buoy lines greater than $\frac{3}{8}$ inch diameter (proposed to begin February 1, 2021); (4) ban fishing single traps by the majority of its active fleet (proposed to begin January 1, 2022); (5) universal requirement of 1,700 pound breaking strength line or equivalent contrivance (proposed to begin February 1, 2021); (6) permitting and regulatory scheme designed to reduce participation and effort over time (currently in place); and (7) demonstrated substantial decline in the number of participants and the number of buoy lines deployed (currently in place). Based on these mitigation efforts, MA DMF recommends NMFS reclassify the Massachusetts state waters lobster trap/pot fishery as its own non-Category I fishery.

Response: NMFS appreciates the actions the state of Massachusetts has taken, and continues to take, to help conserve and protect North Atlantic right whales. However, the current implemented measures are not enough to suggest Massachusetts's state waters lobster trap/pot fishery should be split from the Category I Northeast/mid-Atlantic American lobster trap/pot fishery. At this time, NMFS retains the Category I classification for the Northeast/Mid-Atlantic American lobster trap/pot fishery, which includes the state waters of Massachusetts. Additional detail on how gear would be considered unique to differentiate it from other state lobster and trap/pot fisheries is included in response to Comment #11. NMFS looks forward to seeing what measures the state of Massachusetts will finalize and implement for the state lobster trap/pot fishery in the future. Should major changes to lobster gear and fishing practices be required and implemented for all Massachusetts state lobster fishing gear, making this gear unique and easily identified from other state and Federal gear, NMFS will re-evaluate the status of this fishery and consider it in a future proposed LOF.

Comment 16: Whale Safe USA requests NMFS maintain the Category I classifications for Northeast/Mid-Atlantic American lobster trap/pot fishery and Northeast sink gillnet fishery.

Response: As stated above in response to Comments #11 and 15, NMFS retains the Category I classification of the Northeast/Mid-Atlantic American lobster trap/pot fishery. Additionally, no data is currently available to suggest

state fisheries should be separated from the Category I Northeast sink gillnet fishery, therefore NMFS retains the Category I classification for the Northeast sink gillnet fishery.

Summary of Changes From the Proposed Rule

NMFS reclassifies the AK BSAI Pacific cod longline fishery from a Category II to Category III fishery. NMFS also removes both the Eastern North Pacific AK resident stock and Gulf of Alaska, BSAI transient stock of killer whales from the list of species and/or stocks incidentally killed or injured in the BSAI Pacific cod longline fishery.

NMFS updates the MMAP certificate process for calendar year 2021. MMAP certificates issued in 2020 remain in effect, valid through December 31, 2021, for vessel or gear owners participating in all Category I and II fisheries as of the final 2021 LOF.

Summary of Changes to the LOF for 2021

The following summarizes changes to the LOF for 2021, including the classification of fisheries, fisheries listed, the estimated number of vessels/persons in a particular fishery, and the species and/or stocks that are incidentally killed or injured in a particular fishery. NMFS re-classifies two fisheries in the LOF for 2021. NMFS also makes changes to the estimated number of vessels/persons and list of species and/or stocks killed or injured in certain fisheries. The classifications and definitions of U.S. commercial fisheries for 2021 are identical to those provided in the LOF for 2020 with the changes discussed below. State and regional abbreviations used in the following paragraphs include: AK (Alaska), CA (California), HI (Hawaii), OR (Oregon), WA (Washington), and WNA (Western North Atlantic).

Commercial Fisheries in the Pacific Ocean

Classification of Fisheries

NMFS reclassifies the AK Bering Sea, Aleutian Islands Pacific cod pot fishery from a Category III to a Category II fishery.

NMFS reclassifies the AK BSAI Pacific cod longline fishery from a Category II to Category III fishery.

Fishery Name and Organizational Changes

NMFS adds a superscript "1" to the CA/OR/WA stock of minke whale indicating it is driving the Category II classification of the CA thresher shark/swordfish drift gillnet (≥ 14 in mesh) fishery.

Number of Vessels/Persons

NMFS updates the estimated number of vessels/persons in the Pacific Ocean (Table 1) as follows:

Category I

- HI deep-set longline fishery from 145 to 143 vessels/persons;

Category II

- HI shallow-set longline fishery from 18 to 11 vessels/persons;
- American Samoa longline fishery from 15 to 13 vessels/persons; and

Category III

- American Samoa bottomfish handline fishery from fewer than 30 to fewer than 20 vessels/persons.

List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean

NMFS adds the Aleutian Islands stock of harbor seal to the list of species/stocks incidentally killed or injured in the Category II AK Bering Sea, Aleutian Islands rockfish trawl fishery.

NMFS adds three stocks to the list of species/stocks incidentally killed or injured in the Category II AK Bering Sea, Aleutian Islands Pacific cod pot fishery: (1) Bristol Bay stock of harbor seal, (2) Western North Pacific stock of humpback whale, and (3) Central North Pacific stock of humpback whale.

NMFS adds both the Eastern North Pacific Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock, and West Coast Transient stock, of killer whales to the list of species/stocks incidentally killed or injured in the Category II CA Dungeness crab pot fishery.

NMFS adds two stocks to the list of species/stocks incidentally killed or injured in the Category III CA squid purse seine fishery: (1) CA/OR/WA stock of Risso's dolphin and (2) U.S. stock of California sea lion.

NMFS adds the Cook Inlet stock of harbor seal to the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska halibut longline fishery.

NMFS adds the Aleutian Islands stock of harbor seal to the list of species/stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands Atka mackerel trawl fishery.

NMFS adds the U.S. stock of California sea lion to the list of species/stocks incidentally killed or injured in the Category III WA/OR/CA shrimp trawl fishery.

NMFS adds two stocks to the list of species/stocks incidentally killed or injured in the Category III WA/OR/CA groundfish trawl fishery: (1) California

breeding stock of northern elephant seal and (2) CA/OR/WA stock of northern right whale dolphin.

NMFS adds to the Western North Pacific stock of humpback whale to the list of species/stocks incidentally killed or injured in the Category III AK/WA/OR/CA commercial passenger fishing vessel fishery. NMFS removes three stocks from the list of species/stocks incidentally killed or injured in the Category II AK Bering Sea, Aleutian Islands pollock trawl fishery: (1) Alaska stock of ringed seal, (2) Central North Pacific stock of humpback whale and (3) Western North Pacific stock of humpback whale.

NMFS removes the Alaska stock of ringed seal from the list of species/stocks incidentally killed or injured in the Category II AK Bering Sea, Aleutian Islands Pacific cod longline fishery.

NMFS removes the Western U.S. stock of Steller sea lion from the list of species/stocks incidentally killed or injured in the Category II AK Gulf of Alaska sablefish longline fishery.

NMFS removes the Alaska stock of ringed seal from the list of species/stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands Pacific cod trawl fishery.

NMFS removes the Alaska stock of harbor seal from the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska flatfish trawl fishery.

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

Fishery Name and Organizational Changes and Clarification

NMFS adds a superscript “1” to the following four stocks to indicate they are driving the Category II classification of the Northeast trawl fishery: (1) Western North Atlantic stock of Risso’s dolphin, (2) Western North Atlantic stock of long-finned pilot whale, (3) Western North Atlantic offshore stock of bottlenose dolphin, and (4) Western North Atlantic stock of gray seal.

NMFS clarifies the fishery description of the Category II Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery. NMFS clarifies that this fishery targets shrimp species with various gear types, but mainly utilizes skimmer or otter trawls. These gear types likely entangle marine mammals, particularly bottlenose dolphins, in very similar ways. The common entangling mechanism of these gear types are the “lazy” or “easy” line.

NMFS clarifies the fishery description of the Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery. NMFS clarifies that the

fishery does not target bluefin tuna, shortfin mako sharks and other shark species.

As discussed in the proposed rule, NMFS clarifies its response to Comment #14 in the 2020 Final LOF (85 FR 21079; April 16, 2020). In Comment #14, MLA notes “there has been only one right whale entangled in Maine gear in April 2002, and the entanglement was determined to be a non-serious injury. There are two additional non-serious injury entanglement cases that involved Maine lobster gear. However, Maine lobster gear was not the primary entangling gear in these cases.” In the 2020 Final LOF, NMFS’ response in part to this comment stated: “We recognize that there has only been one confirmed mortality (in 2012) in American lobster gear in the past decade. All other documented lobster interactions were determined to result in non-serious injuries. However, there have been a number of entanglements for which interventions occurred because these entanglements were determined to be resulting in serious injuries (Henry *et al.*, 2019).”

NMFS clarifies part of the response to Comment #14 to state: We recognize there has been only one confirmed mortality (in 2012) in the past decade in U.S. Northern inshore/nearshore trap/pot gear which could be gear from the Northeast/Mid-Atlantic American lobster trap/pot fishery or the Atlantic mixed species trap/pot fishery. All other documented lobster interactions were determined to result in non-serious injuries. However, there have been a number of entanglements for which interventions occurred because these entanglements were determined to be resulting in serious injuries (Henry *et al.*, 2019).

Number of Vessels/Persons

NMFS updates the estimated number of vessels/persons in the Atlantic Ocean, Gulf of Mexico, and Caribbean (Table 2) as follows:

Category I

- Mid-Atlantic gillnet fishery from 3,950 to 4,020 vessels/person;
- Northeast sink gillnet fishery from 3,163 to 4,072 vessels/persons;

Category II

- Chesapeake Bay inshore gillnet fishery from 248 to 265 vessels/persons;
- Northeast bottom trawl fishery from 2,238 to 968 vessels/persons;
- Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery from 4,950 to 10,824 vessels/persons;

- Atlantic mixed species trap/pot fishery from 3,332 to 3,493 vessels/persons;

- Mid-Atlantic menhaden purse seine fishery from 19 to 17 vessels/persons;
- Virginia pound net fishery from 26 to 20 vessels/persons;

Category III

- Caribbean gillnet fishery from >991 to 127 vessels/persons;
- Caribbean mixed species trap/pot fishery from >501 to 154 vessels/persons;
- Caribbean spiny lobster trap/pot fishery from >197 to 40 vessels/persons; and
- Caribbean haul/beach seine fishery from 15 to 38 vessels/person.

NMFS notes there is variability in the estimated number of vessels/persons in the Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery. This variability is due to multiple permitting agencies, differences in fishery management, and artifacts with available data sets. A complete explanation of the variability is available in the Environmental Impact Statement to Reduce the Incidental Bycatch and Mortality of Sea Turtles in the Southeastern U.S. Shrimp Fisheries (November 4, 2019).

List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean

NMFS adds the Mobile Bay, Bonsecour Bay stock of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category II Gulf of Mexico gillnet fishery.

NMFS adds the Western North Atlantic offshore stock of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category II mid-Atlantic mid-water trawl (including pair trawl) fishery.

NMFS adds the Puerto Rico and U.S. Virgin Islands stock of bottlenose dolphin to the list of species/stocks incidentally killed or injured in Category III Caribbean mixed species trap/pot fishery.

Following consultation with the U.S. Fish and Wildlife Service, NMFS adds the Antillean subspecies (Puerto Rico stock) of West Indian manatee to the list of species/stocks incidentally killed or injured in Category III Caribbean haul/beach seine fishery.

NMFS removes the Western North Atlantic offshore stock of bottlenose dolphin from the list of species/stocks incidentally killed or injured in the Category III Gulf of Maine, U.S. mid-

Atlantic tuna, shark, swordfish hook-and line/harpoon fishery.

Commercial Fisheries on the High Seas

Number of Vessels/Persons

NMFS updates the estimated number of HSFCA permits for high seas fisheries (Table 3) as follows:

Category I

- Atlantic highly migratory species longline fishery from 53 to 45 HSFCA permits;
- Western Pacific pelagic longline (HI deep-set component) fishery from 145 to 143 HSFCA permits;

Category II

- South Pacific tuna purse seine fishery from 33 to 26 HSFCA permits;
- South Pacific tuna longline fishery from 2 to 3 HSFCA permits;
- Western Pacific pelagic longline (HI shallow-set component) fishery from 18 to 11 HSFCA permits;
- Atlantic highly migratory species handline/pole and line fishery from 2 to 1 HSFCA permits;
- Pacific highly migratory species handline/pole and line fishery from 41 to 43 HSFCA permits;
- South Pacific albacore troll handline/pole and line fishery from 11 to 10 HSFCA permits;
- South Pacific albacore troll fishery from 17 to 18 HSFCA permits;
- Western Pacific pelagic troll fishery from 5 to 4 HSFCA permits;

Category III

- Northwest Atlantic bottom longline fishery from 3 to 2 HSFCA permits;
- Pacific highly migratory species longline fishery from 108 to 105 HSFCA permits; and
- Pacific highly migratory species troll fishery from 119 to 111 HSFCA permits.

List of Fisheries

The following tables set forth the list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. 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 3 lists commercial fisheries on the high seas, and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels or persons participating in fisheries operating within U.S. waters 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, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels or persons in the fishery. NMFS acknowledges that, in some cases, these estimates may be inflations of actual effort. For example, the State of Hawaii does not issue fishery-specific licenses, and the number of participants reported in the LOF represents the number of commercial marine license holders who reported using a particular fishing gear type/method at least once in a given year, without considering how many times the gear was used. For these fisheries, effort by a single participant is counted the same whether the fisherman used the gear only once or every day. In the Mid-Atlantic and New England fisheries, the numbers represent the potential effort for each fishery, given the multiple gear types for which several state permits may allow. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates, as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Tables 1 and 2 serve to provide a description of the fishery's potential effort (state and Federal). If NMFS is able to extract more accurate information on the gear types used by state permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on Table 1 or 2, contact the relevant regional office (contact information included above in Where can I find more information about the LOF and the MMAP? section).

For high seas fisheries, Table 3 lists the number of valid HSFCA permits currently held. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time. As noted previously in this LOF, the number of HSFCA permits listed in Table 3 for the high seas components of fisheries that also operate within U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

Tables 1, 2, and 3 also list the marine mammal species and/or stocks incidentally killed or injured (seriously or non-seriously) in each fishery based

on SARs, injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.*, MMAP reports), and anecdotal reports. The best available scientific information included in these reports is based on data through 2017. This list includes all species and/or stocks known to be killed or injured in a given fishery, but also includes species and/or stocks for which there are anecdotal records of a mortality or injury. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.*, MMAP reports) may not be verified. In Tables 1 and 2, NMFS has designated those species/stocks driving a fishery's classification (*i.e.*, the fishery is classified based on mortalities and serious injuries of a marine mammal stock that are greater than or equal to 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.

In Tables 1 and 2, there are several fisheries classified as Category II that have no recent documented mortalities or serious injuries of marine mammals, or fisheries that did not result in a mortality or serious injury rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear 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 (*i.e.*, fishing techniques, gear types, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area). NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by adding a "2" after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the EEZ boundary and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately on Table 1 or 2 and Table 3, are considered the same fisheries on either side of the EEZ boundary. NMFS has designated those fisheries in each table with an asterisk (*) after the fishery's name.

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

Fishery description	Estimated # of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
AK Peninsula/Aleutian Islands salmon drift gillnet ²	162	Harbor porpoise, GOA ¹ . Harbor seal, GOA. Steller sea lion, Western U.S. Dall's porpoise, AK. Harbor porpoise, GOA. Harbor seal, GOA.
AK Peninsula/Aleutian Islands salmon set gillnet ²	113	Northern fur seal, Eastern Pacific. Harbor porpoise, Bering Sea. Northern sea otter, Southwest AK. Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall's porpoise, AK. Harbor porpoise, GOA ¹ . Harbor seal, GOA. Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, North Pacific. Sea otter, South central AK.
AK Southeast salmon drift gillnet	474	Steller sea lion, Western U.S. ¹ Dall's porpoise, AK. Harbor porpoise, Southeast AK. Harbor seal, Southeast AK. Humpback whale, Central North Pacific ¹ . Pacific white-sided dolphin, North Pacific.
AK Yakutat salmon set gillnet ²	168	Steller sea lion, Eastern U.S. Gray whale, Eastern North Pacific. Harbor Porpoise, Southeastern AK. Harbor seal, Southeast AK. Humpback whale, Central North Pacific (Southeast AK).
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).	154	Dall's porpoise, CA/OR/WA. Harbor porpoise, inland WA ¹ . Harbor seal, WA inland.
<i>Trawl Fisheries:</i>		
AK Bering Sea, Aleutian Islands flatfish trawl	32	Bearded seal, AK. Gray whale, Eastern North Pacific. Harbor porpoise, Bering Sea. Harbor seal, Bering Sea. Humpback whale, Western North Pacific ¹ . Killer whale, AK resident ¹ . Killer whale, GOA, AI, BS transient ¹ . Northern fur seal, Eastern Pacific. Ringed seal, AK. Ribbon seal, AK. Spotted seal, AK. Steller sea lion, Western U.S. ¹ . Walrus, AK.
AK Bering Sea, Aleutian Islands pollock trawl	102	Bearded Seal, AK. Beluga whale, Bristol Bay. Beluga whale, Eastern Bering Sea. Beluga whale, Eastern Chukchi Sea. Harbor seal, AK. Northern fur seal, Eastern Pacific. Ribbon seal, AK. Spotted seal, AK. Steller sea lion, Western U.S. ¹ .
AK Bering Sea, Aleutian Islands rockfish trawl	17	Harbor seal, Aleutian Islands. Killer whale, ENP AK resident ¹ . Killer whale, GOA, AI, BS transient ¹ . Ribbon seal, AK.
<i>Pot, Ring Net, and Trap Fisheries:</i>		
AK Bering Sea, Aleutian Islands Pacific cod pot	59	Harbor seal, Bristol Bay. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific.
CA coonstripe shrimp pot	14	Gray whale, Eastern North Pacific. Harbor seal, CA. Humpback whale, CA/OR/WA.
CA spiny lobster	186	Bottlenose dolphin, CA/OR/WA offshore. Humpback whale, CA/OR/WA ¹ . Gray whale, Eastern North Pacific. Southern sea otter.
CA spot prawn pot	23	Gray whale, Eastern North Pacific.

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

Fishery description	Estimated # of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
CA Dungeness crab pot	501	Humpback whale, CA/OR/WA ¹ . Long-beaked common dolphin, CA.
OR Dungeness crab pot	342	Blue whale, Eastern North Pacific ¹ . Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA ¹ . Killer whale, Eastern North Pacific GOA, BSAI transient. Killer whale, West Coast transient.
WA/OR/CA sablefish pot	155	Gray whale, Eastern North Pacific.
WA coastal Dungeness crab pot	197	Humpback whale, CA/OR/WA ¹ . Gray whale, Eastern North Pacific.
<i>Longline/Set Line Fisheries:</i>		
AK Gulf of Alaska sablefish longline	295	Humpback whale, CA/OR/WA ¹ .
HI shallow-set longline * ^	11	Sperm whale, North Pacific. Steller sea lion, Eastern U.S. Blainville's beaked whale, HI. Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic ¹ . Humpback whale, Central North Pacific. Risso's dolphin, HI. Rough-toothed dolphin, HI. Striped dolphin, HI.
American Samoa longline ²	13	False killer whale, American Samoa. Rough-toothed dolphin, American Samoa.
HI shortline ²	9	Short-finned pilot whale, unknown. None documented.
Category III		
<i>Gillnet Fisheries:</i>		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1,778	Harbor porpoise, Bering Sea.
AK Prince William Sound salmon set gillnet	29	Harbor seal, GOA. Humpback whale, Central North Pacific. Sea otter, South central AK. Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	920	None documented.
CA set gillnet (mesh size <3.5 in)	296	None documented.
HI inshore gillnet	36	Bottlenose dolphin, HI. Spinner dolphin, HI.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast.
WA/OR Mainstem Columbia River eulachon gillnet	15	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.
<i>Miscellaneous Net Fisheries:</i>		
AK Cook Inlet salmon purse seine	83	Humpback whale, Central North Pacific.
AK Kodiak salmon purse seine	376	Dall's porpoise, AK. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific.
AK Southeast salmon purse seine	315	Humpback whale, Central North Pacific.
AK roe herring and food/bait herring beach seine	10	None documented.
AK roe herring and food/bait herring purse seine	356	None documented.
AK salmon beach seine	31	None documented.
AK salmon purse seine (Prince William Sound, Chignik, Alaska Peninsula).	936	Harbor seal, GOA. Harbor seal, Prince William Sound.
WA/OR sardine purse seine	42	None documented.
CA anchovy, mackerel, sardine purse seine	65	California sea lion, U.S. Harbor seal, CA.
CA squid purse seine	80	California sea lion, U.S. Long-beaked common dolphin, CA. Risso's dolphin, CA/OR/WA. Short-beaked common dolphin, CA/OR/WA.
CA tuna purse seine *	10	None documented.
WA/OR Lower Columbia River salmon seine	10	None documented.
WA/OR herring, smelt, squid purse seine or lampara	130	None documented.
WA salmon purse seine	75	None documented.
WA salmon reef net	11	None documented.

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

Fishery description	Estimated # of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
HI lift net	17	None documented.
HI inshore purse seine	<3	None documented.
HI throw net, cast net	23	None documented.
HI seine net	24	None documented.
<i>Dip Net Fisheries:</i>		
CA squid dip net	115	None documented.
<i>Marine Aquaculture Fisheries:</i>		
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.
WA salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters.
WA/OR shellfish aquaculture	23	None documented.
<i>Troll Fisheries:</i>		
WA/OR/CA albacore surface hook and line/troll	705	None documented.
CA halibut hook and line/handline	unknown	None documented.
CA white seabass hook and line/handline	unknown	None documented.
AK Bering Sea, Aleutian Islands groundfish hand troll and dinglebar troll.	unknown	None documented.
AK Gulf of Alaska groundfish hand troll and dinglebar troll	unknown	None documented.
AK salmon troll	1,908	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	13	None documented.
CA/OR/WA salmon troll	4,300	None documented.
HI troll	2,117	Pantropical spotted dolphin, HI.
HI rod and reel	322	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	40	None documented.
Guam tuna troll	432	None documented.
<i>Longline/Set Line Fisheries:</i>		
AK Bering Sea, Aleutian Islands Greenland turbot longline	4	Killer whale, AK resident.
AK Bering Sea, Aleutian Islands Pacific cod longline	45	Northern fur seal, Eastern Pacific. Spotted seal, AK. Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands sablefish longline	22	None documented.
AK Bering Sea, Aleutian Islands halibut longline	127	Northern fur seal, Eastern Pacific. Sperm whale, North Pacific.
AK Gulf of Alaska halibut longline	855	Harbor seal, Cook Inlet. Steller sea lion, Eastern U.S.
AK Gulf of Alaska Pacific cod longline	92	Steller sea lion, Western U.S.
AK octopus/squid longline	3	None documented.
AK state-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish).	464	None documented.
WA/OR/CA groundfish, bottomfish longline/set line	367	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Northern elephant seal, California breeding. Sperm whale, CA/OR/WA. Steller sea lion, Eastern U.S.
WA/OR Pacific halibut longline	350	None documented.
CA pelagic longline	1	None documented in the most recent 5 years of data.
HI kaka line	15	None documented.
HI vertical line	3	None documented.
<i>Trawl Fisheries:</i>		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	13	Bearded seal, AK. Harbor seal, Aleutian Islands. Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	72	Bearded seal, AK. Ribbon seal, AK. Steller sea lion, Western U.S.
AK Gulf of Alaska flatfish trawl	36	Northern elephant seal, North Pacific. Steller sea lion, Western U.S.
AK Gulf of Alaska Pacific cod trawl	55	Harbor seal, AK. Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	67	Dall's porpoise, AK. Fin whale, Northeast Pacific. Northern elephant seal, North Pacific. Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	43	Steller sea lion, Western U.S.
AK Kodiak food/bait herring otter trawl	4	None documented.
AK shrimp otter trawl and beam trawl	38	None documented.

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

Fishery description	Estimated # of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
AK state-managed waters of Prince William Sound groundfish trawl.	2	None documented.
CA halibut bottom trawl	47	California sea lion, U.S. Harbor porpoise, unknown. Harbor seal, unknown. Northern elephant seal, CA breeding. Steller sea lion, unknown.
CA sea cucumber trawl	16	None documented.
WA/OR/CA shrimp trawl	300	California sea lion, U.S.
WA/OR/CA groundfish trawl	160–180	California sea lion, U.S. Dall's porpoise, CA/OR/WA. Harbor seal, OR/WA coast. Northern elephant seal, CA breeding. Northern fur seal, Eastern Pacific. Northern right whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Steller sea lion, Eastern U.S.
<i>Pot, Ring Net, and Trap Fisheries:</i>		
AK Bering Sea, Aleutian Islands sablefish pot	6	None documented.
AK Bering Sea, Aleutian Islands crab pot	540	Bowhead whale, Western Arctic. Gray whale, Eastern North Pacific.
AK Gulf of Alaska crab pot	271	None documented.
AK Gulf of Alaska Pacific cod pot	116	Harbor seal, GOA.
AK Gulf of Alaska sablefish pot	248	None documented.
AK Southeast Alaska crab pot	375	Humpback whale, Central North Pacific (Southeast AK).
AK Southeast Alaska shrimp pot	99	Humpback whale, Central North Pacific (Southeast AK).
AK shrimp pot, except Southeast	141	None documented.
AK octopus/squid pot	15	None documented.
CA rock crab pot	124	Gray whale, Eastern North Pacific. Harbor seal, CA.
WA/OR/CA hagfish pot	54	None documented.
WA/OR shrimp pot/trap	254	None documented.
WA Puget Sound Dungeness crab pot/trap	249	None documented.
HI crab trap	5	Humpback whale, Central North Pacific.
HI fish trap	9	None documented.
HI lobster trap	<3	None documented in recent years.
HI shrimp trap	10	None documented.
HI crab net	4	None documented.
HI Kona crab loop net	33	None documented.
<i>Hook and Line, Handline, and Jig Fisheries:</i>		
AK Bering Sea, Aleutian Islands groundfish jig	2	None documented.
AK Gulf of Alaska groundfish jig	214	Fin whale, Northeast Pacific.
AK halibut jig	71	None documented.
American Samoa bottomfish	fewer than 20	None documented.
Commonwealth of the Northern Mariana Islands bottomfish.	28	None documented.
Guam bottomfish	>300	None documented.
HI aku boat, pole, and line	<3	None documented.
HI bottomfish handline	578	None documented in recent years.
HI inshore handline	357	None documented.
HI pelagic handline	534	None documented.
WA groundfish, bottomfish jig	679	None documented.
Western Pacific squid jig	0	None documented.
<i>Harpoon Fisheries:</i>		
CA swordfish harpoon	6	None documented.
<i>Pound Net/Weir Fisheries:</i>		
AK herring spawn on kelp pound net	291	None documented.
AK Southeast herring roe/food/bait pound net	2	None documented.
HI bullpen trap	3	None documented.
<i>Bait Pens:</i>		
WA/OR/CA bait pens	13	California sea lion, U.S.
<i>Dredge Fisheries:</i>		
AK scallop dredge	108 (5 AK)	None documented.
<i>Dive, Hand/Mechanical Collection Fisheries:</i>		
AK clam	130	None documented.
AK Dungeness crab	2	None documented.
AK herring spawn on kelp	266	None documented.
AK miscellaneous invertebrates handpick	214	None documented.
HI black coral diving	<3	None documented.
HI fish pond	5	None documented.

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

Fishery description	Estimated # of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
HI handpick	46	None documented.
HI lobster diving	19	None documented.
HI spearfishing	163	None documented.
WA/CA kelp	4	None documented.
WA/OR bait shrimp, clam hand, dive, or mechanical collection.	201	None documented.
OR/CA sea urchin, sea cucumber hand, dive, or mechanical collection.	10	None documented.
<i>Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:</i>		
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (1,006 AK)	Humpback whale, Western North Pacific. Killer whale, unknown. Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
<i>Live Finfish/Shellfish Fisheries:</i>		
CA nearshore finfish live trap/hook-and-line	93	None documented.
HI aquarium collecting	90	None documented.

List of Abbreviations and Symbols Used in Table 1: AI—Aleutian Islands; AK—Alaska; BS—Bering Sea; CA—California; ENP—Eastern North Pacific; GOA—Gulf of Alaska; HI—Hawaii; MHI—Main Hawaiian Islands; OR—Oregon; WA—Washington;

¹ Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR.

² Fishery classified by analogy.

* Fishery has an associated high seas component listed in Table 3; and

^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of species and/or stocks killed or injured in high seas component of the fishery, minus species and/or stocks that have geographic ranges exclusively on the high seas. The species and/or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

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

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Category I		
<i>Gillnet Fisheries:</i>		
Mid-Atlantic gillnet	4,020	Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, Southern Migratory coastal. ¹ Bottlenose dolphin, Northern NC estuarine system. ¹ Bottlenose dolphin, Southern NC estuarine system. ¹ Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Gray seal, WNA. Harbor porpoise, GME/BF. Harbor seal, WNA. Hooded seal, WNA. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast.
Northeast sink gillnet	4,072	Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Fin whale, WNA. Gray seal, WNA. ¹ Harbor porpoise, GME/BF. Harbor seal, WNA. Harp seal, WNA. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. North Atlantic right whale, WNA. Risso's dolphin, WNA. White-sided dolphin, WNA.
<i>Trap/Pot Fisheries:</i>		
Northeast/Mid-Atlantic American lobster trap/pot	8,485	Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. North Atlantic right whale, WNA. ¹
<i>Longline Fisheries:</i>		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline*.	201	Atlantic spotted dolphin, Northern GMX. Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, WNA offshore. Common dolphin, WNA

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

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
<p>Category II</p>		
<p><i>Gillnet Fisheries:</i></p>		
Chesapeake Bay inshore gillnet ²	265	Bottlenose dolphin, unknown (Northern migratory coastal or Southern migratory coastal).
Gulf of Mexico gillnet ²	248	Bottlenose dolphin, Eastern GMX coastal.
		Bottlenose dolphin, GMX bay, sound, and estuarine.
		Bottlenose dolphin, Mobile Bay, Bonsecour Bay.
		Bottlenose dolphin, Northern GMX coastal.
NC inshore gillnet	2,676	Bottlenose dolphin, Western GMX coastal.
Northeast anchored float gillnet ²	852	Bottlenose dolphin, Northern NC estuarine system. ¹
		Bottlenose dolphin, Southern NC estuarine system. ¹
Northeast drift gillnet ²	1,036	Harbor seal, WNA.
Southeast Atlantic gillnet ²	273	Humpback whale, Gulf of Maine.
		White-sided dolphin, WNA.
		None documented.
		Bottlenose dolphin, Central FL coastal.
		Bottlenose dolphin, Northern FL coastal.
		Bottlenose dolphin, SC/GA coastal.
		Bottlenose dolphin, Southern migratory coastal.
Southeastern U.S. Atlantic shark gillnet	21	Bottlenose dolphin, unknown (Central FL, Northern FL, SC/GA coastal, or Southern migratory coastal).
		North Atlantic right whale, WNA.
<p><i>Trawl Fisheries:</i></p>		
Mid-Atlantic mid-water trawl (including pair trawl)	320	Bottlenose dolphin, WNA offshore.
Mid-Atlantic bottom trawl	633	Harbor seal, WNA.
		Bottlenose dolphin, WNA offshore. ¹
		Common dolphin, WNA. ¹
		Gray seal, WNA. ¹
		Harbor seal, WNA.
		Risso's dolphin, WNA. ¹
		White-sided dolphin, WNA.
Northeast mid-water trawl (including pair trawl)	542	Common dolphin, WNA.
		Gray seal, WNA.
		Harbor seal, WNA.
		Long-finned pilot whale, WNA. ¹
Northeast bottom trawl	968	Bottlenose dolphin, WNA offshore. ¹
		Common dolphin, WNA.
		Gray seal, WNA. ¹
		Harbor porpoise, GME/BF.
		Harbor seal, WNA.
		Harp seal, WNA.
		Long-finned pilot whale, WNA. ¹
		Risso's dolphin, WNA. ¹
		White-sided dolphin, WNA. ¹
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	10,824	Atlantic spotted dolphin, Northern Gulf of Mexico.
		Bottlenose dolphin, Charleston estuarine system.
		Bottlenose dolphin, Eastern GMX coastal. ¹
		Bottlenose dolphin, GMX bay, sound, estuarine. ¹
		Bottlenose dolphin, GMX continental shelf.
		Bottlenose dolphin, Mississippi River Delta.
		Bottlenose dolphin, Mobile Bay, Bonsecour Bay.

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

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
<i>Trap/Pot Fisheries:</i> Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot ² .	1,101	Bottlenose dolphin, Northern GMX coastal. ¹ Bottlenose dolphin, SC/GA coastal. ¹ Bottlenose dolphin, Southern migratory coastal. Bottlenose dolphin, Western GMX coastal. ¹
Atlantic mixed species trap/pot ²	3,493	Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay. Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion). Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Sarasota Bay, Little Sarasota Bay. Fin whale, WNA.
Atlantic blue crab trap/pot	6,679	Humpback whale, Gulf of Maine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Central GA estuarine system. ¹ Bottlenose dolphin, Charleston estuarine system. ¹ Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Northern FL coastal. ¹ Bottlenose dolphin, Northern GA/Southern SC estuarine system. Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, Northern NC estuarine system. ¹ Bottlenose dolphin, Northern SC estuarine system. Bottlenose dolphin, SC/GA coastal. Bottlenose dolphin, Southern GA estuarine system. Bottlenose dolphin, Southern Migratory coastal. ¹ Bottlenose dolphin, Southern NC estuarine system. West Indian manatee, FL.
<i>Purse Seine Fisheries:</i> Gulf of Mexico menhaden purse seine	40–42	Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Mississippi River Delta. Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Northern GMX coastal. ¹ Bottlenose dolphin, Western GMX coastal. ¹
Mid-Atlantic menhaden purse seine ²	17	Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, Southern Migratory coastal.
<i>Haul/Beach Seine Fisheries:</i> Mid-Atlantic haul/beach seine	359	Bottlenose dolphin, Northern Migratory coastal. ¹ Bottlenose dolphin, Northern NC estuarine system. ¹ Bottlenose dolphin, Southern Migratory coastal. ¹
NC long haul seine	22	Bottlenose dolphin, Northern NC estuarine system. ¹ Bottlenose dolphin, Southern NC estuarine system.
<i>Stop Net Fisheries:</i> NC roe mullet stop net	1	Bottlenose dolphin, Northern NC estuarine system. Bottlenose dolphin, unknown (Southern migratory coastal or Southern NC estuarine system).
<i>Pound Net Fisheries:</i> VA pound net	20	Bottlenose dolphin, Northern migratory coastal. Bottlenose dolphin, Northern NC estuarine system. Bottlenose dolphin, Southern Migratory coastal. ¹
Category III		
<i>Gillnet Fisheries:</i> Caribbean gillnet	127	None documented in the most recent 5 years of data.
DE River inshore gillnet	unknown	None documented in the most recent 5 years of data.
Long Island Sound inshore gillnet	unknown	None documented in the most recent 5 years of data.
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet.	unknown	None documented in the most recent 5 years of data.
Southeast Atlantic inshore gillnet	unknown	Bottlenose dolphin, Northern SC estuarine system.
<i>Trawl Fisheries:</i> Atlantic shellfish bottom trawl	>58	None documented.

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

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Gulf of Mexico butterfish 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	Bottlenose dolphin, SC/GA coastal.
<i>Marine Aquaculture Fisheries:</i>		
Finfish aquaculture	48	Harbor seal, WNA.
Shellfish aquaculture	unknown	None documented.
<i>Purse Seine Fisheries:</i>		
Gulf of Maine Atlantic herring purse seine	>7	Harbor seal, WNA.
Gulf of Maine menhaden purse seine	>2	None documented.
FL West Coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal.
U.S. Atlantic tuna purse seine *	5	None documented in most recent 5 years of data.
<i>Longline/Hook and Line Fisheries:</i>		
Northeast/Mid-Atlantic bottom longline/hook-and-line	>1,207	None documented.
Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon.	2,846	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	Bottlenose dolphin, GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	39	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.	680	None documented.
U.S. Atlantic, Gulf of Mexico trotline	unknown	None documented.
<i>Trap/Pot Fisheries:</i>		
Caribbean mixed species trap/pot	154	Bottlenose dolphin, Puerto Rico and United States Virgin Islands. None documented.
Caribbean spiny lobster trap/pot	40	None documented.
FL spiny lobster trap/pot	1,268	Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay estuarine. Bottlenose dolphin, FL Keys.
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Baratavia Bay. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Mobile Bay, Bonsecour Bay. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Western GMX coastal. 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.
U.S. Mid-Atlantic eel trap/pot	unknown	None documented.
<i>Stop Seine/Weir/Pound Net/Floating Trap/Fyke Net Fisheries:</i>		
Gulf of Maine herring and Atlantic mackerel stop seine/weir.	>1	Harbor porpoise, GME/BF. Harbor seal, WNA. Minke whale, Canadian east coast. Atlantic 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 NC roe mullet stop net).	unknown	Bottlenose dolphin, Northern NC estuarine system.
RI floating trap	9	None documented.
Northeast and Mid-Atlantic fyke net	unknown	None documented.
<i>Dredge Fisheries:</i>		
Gulf of Maine sea urchin dredge	unknown	None documented.
Gulf of Maine mussel dredge	unknown	None documented.
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	>403	None documented.
Mid-Atlantic blue crab dredge	unknown	None documented.
Mid-Atlantic soft-shell clam dredge	unknown	None documented.
Mid-Atlantic whelk dredge	unknown	None documented.
U.S. Mid-Atlantic/Gulf of Mexico oyster dredge	7,000	None documented.
New England and Mid-Atlantic offshore surf clam/quahog dredge.	unknown	None documented.
<i>Haul/Beach Seine Fisheries:</i>		

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

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Caribbean haul/beach seine	38	West Indian manatee, Puerto Rico.
Gulf of Mexico haul/beach seine	unknown	None documented.
Southeastern U.S. Atlantic haul/beach seine	25	None documented.
<i>Dive, Hand/Mechanical Collection Fisheries:</i>		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
Gulf of Maine urchin dive, hand/mechanical collection	unknown	None documented.
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented.
<i>Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:</i>		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	Bottlenose dolphin, Barataria Bay estuarine system. Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Choctawhatchee Bay. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay. Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Northern FL coastal. Bottlenose dolphin, Northern GA/Southern SC estuarine. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Northern migratory coastal. Bottlenose dolphin, Northern NC estuarine. Bottlenose dolphin, Southern migratory coastal. Bottlenose dolphin, Southern NC estuarine system. Bottlenose dolphin, SC/GA coastal. Bottlenose dolphin, Western GMX coastal. Short-finned pilot whale, WNA.

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; NY—New York; RI—Rhode Island; SC—South Carolina; VA—Virginia; WNA—Western North Atlantic;

¹ Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR;

² Fishery classified by analogy; and

* Fishery has an associated high seas component listed in Table 3.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
Category I		
<i>Longline Fisheries:</i>		
Atlantic Highly Migratory Species *	45	Atlantic spotted dolphin, WNA. Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Cuvier's beaked whale, WNA. False killer whale, WNA. Killer whale, GMX oceanic. Kogia spp. whale (Pygmy or dwarf sperm whale), WNA. Long-finned pilot whale, WNA. Mesoplodon beaked whale, WNA. Minke whale, Canadian East coast. Pantropical spotted dolphin, WNA. Risso's dolphin, GMX. Risso's dolphin, WNA. Short-finned pilot whale, WNA.
Western Pacific Pelagic (HI Deep-set component) * ^	143	Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. Humpback whale, Central North Pacific. Kogia spp. (Pygmy or dwarf sperm whale), HI.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
		Pygmy killer whale, HI. Risso's dolphin, HI. Short-finned pilot whale, HI. Striped dolphin, HI.
Category II		
<i>Drift Gillnet Fisheries:</i>		
Pacific Highly Migratory Species* ^	5	Long-beaked common dolphin, CA. Humpback whale, CA/OR/WA. 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.
<i>Trawl Fisheries:</i>		
Atlantic Highly Migratory Species**	1	No information.
CCAMLR	0	Antarctic fur seal.
<i>Purse Seine Fisheries:</i>		
South Pacific Tuna Fisheries	26	No information.
Western Pacific Pelagic	1	No information.
<i>Longline Fisheries:</i>		
CCAMLR	0	None documented.
South Pacific Albacore Troll	6	No information.
South Pacific Tuna Fisheries**	3	No information.
Western Pacific Pelagic (HI Shallow-set component)* ^	11	Blainville's beaked whale, HI. Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. Fin whale, HI. Guadalupe fur seal. Humpback whale, Central North Pacific. Mesoplodon sp., unknown. Northern elephant seal, CA breeding. Risso's dolphin, HI. Rough-toothed dolphin, HI. Short-beaked common dolphin, CA/OR/WA. Striped dolphin, HI.
<i>Handline/Pole and Line Fisheries:</i>		
Atlantic Highly Migratory Species	1	No information.
Pacific Highly Migratory Species	43	No information.
South Pacific Albacore Troll	10	No information.
Western Pacific Pelagic	5	No information.
<i>Troll Fisheries:</i>		
Atlantic Highly Migratory Species	0	No information.
South Pacific Albacore Troll	18	No information.
South Pacific Tuna Fisheries**	1	No information.
Western Pacific Pelagic	4	No information.
Category III		
<i>Longline Fisheries:</i>		
Northwest Atlantic Bottom Longline	2	None documented.
Pacific Highly Migratory Species	105	None documented in the most recent 5 years of data.
<i>Purse Seine Fisheries:</i>		
Pacific Highly Migratory Species* ^	5	None documented.
<i>Trawl Fisheries:</i>		
Northwest Atlantic	4	None documented.
<i>Troll Fisheries:</i>		
Pacific Highly Migratory Species*	111	None documented.

List of Terms, Abbreviations, and Symbols Used in Table 3:

CA—California; GMX—Gulf of Mexico; HI—Hawaii; OR—Oregon; WA—Washington; WNA—Western North Atlantic;

* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery;

** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for 5 years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type; and

^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species and/or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS

Take reduction plans	Affected fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP)—50 CFR 229.32.	<p><i>Category I</i> Mid-Atlantic gillnet. Northeast/Mid-Atlantic American lobster trap/pot. Northeast sink gillnet.</p> <p><i>Category II</i> Atlantic blue crab trap/pot. Atlantic mixed species trap/pot. Northeast anchored float gillnet. Northeast drift gillnet. Southeast Atlantic gillnet. Southeastern U.S. Atlantic shark gillnet.* Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot. ^</p>
Bottlenose Dolphin Take Reduction Plan (BDTRP)—50 CFR 229.35.	<p><i>Category I</i> Mid-Atlantic gillnet.</p> <p><i>Category II</i> Atlantic blue crab trap/pot. Chesapeake Bay inshore gillnet fishery. Mid-Atlantic haul/beach seine. Mid-Atlantic menhaden purse seine. NC inshore gillnet. NC long haul seine. NC roe mullet stop net. Southeast Atlantic gillnet. Southeastern U.S. Atlantic shark gillnet. Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl. ^ Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot. ^ VA pound net.</p>
False Killer Whale Take Reduction Plan (FKWTRP)—50 CFR 229.37.	<p><i>Category I</i> HI deep-set longline.</p> <p><i>Category II</i> HI shallow-set longline.</p>
Harbor Porpoise Take Reduction Plan (HPTRP)—50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic).	<p><i>Category I</i> Mid-Atlantic gillnet. Northeast sink gillnet.</p>
Pelagic Longline Take Reduction Plan (PLTRP)—50 CFR 229.36	<p><i>Category I</i> Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.</p>
Pacific Offshore Cetacean Take Reduction Plan (POCTRP)—50 CFR 229.31.	<p><i>Category II</i> CA thresher shark/swordfish drift gillnet (≥14 in mesh).</p>
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	<p><i>Category II</i> Mid-Atlantic bottom trawl. Mid-Atlantic mid-water trawl (including pair trawl). Northeast bottom trawl. Northeast mid-water trawl (including pair trawl).</p>

List of Symbols Used in Table 4:

- * Only applicable to the portion of the fishery operating in U.S. waters; and
- ^ Only applicable to the portion of the fishery operating in the Atlantic Ocean.

Classification

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received on that certification, and no new information has been discovered to change that conclusion. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

This rule contains existing collection-of-information (COI) requirements subject to the Paperwork Reduction Act and would not impose additional or new COI requirements. The COI for the registration of individuals under the

MMPA has been approved by the OMB under OMB Control Number 0648–0293 (0.15 hours per report for new registrants). The requirement for reporting marine mammal mortalities or injuries 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 COI. Send comments regarding these reporting burden estimates or any other aspect of the COI, including suggestions for reducing burden, to NMFS (see **ADDRESSES**).

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 COI,

subject to the requirements of the Paperwork Reduction Act, unless that COI displays a currently valid OMB control number.

This rule has been determined to be not significant for the purposes of Executive Orders 12866 and 13563.

This rule is not expected to be an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

In accordance with the Companion Manual for NOAA Administrative Order (NAO) 216–6A, NMFS determined that publishing this LOF qualifies to be categorically excluded from further NEPA review, consistent with categories of activities identified in Categorical Exclusion G7 (“Preparation of policy directives, rules, regulations, and guidelines of an administrative,

financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis”) of the Companion Manual and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude application of this categorical exclusion. If NMFS takes a management action, for example, through the development of a TRP, NMFS would first prepare an Environmental Impact Statement or Environmental Assessment, as required under NEPA, specific to that action.

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

This rule would 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 rule would 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.

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

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