relevant to the classification of the device. A request for a change in the classification of blood irradiators for the prevention of metastasis, as described in this document, should be provided in response to the proposed rule issued elsewhere in this issue of the **Federal Register** and contain the information required by 21 CFR 860.123, including new information relevant to the classification of the device.

XI. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov*. References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

*1. Radiological Devices Panel ''April 12, 2012: Meeting Materials FDA Generated—Blood Irradiators.'' Available at *https://wayback.archive-it.org/7993/20170403223422/https:/www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/RadiologicalDevicesPanel/ucm299053.htm*.

*2. Radiological Devices Panel, ''November 7, 2023: Radiological Devices Panel of the Medical Devices Advisory Committee Meeting.'' Available at *https://www.fda.gov/advisory-committees/radiological-devices-panel/2023-meeting-materials-radiological-devices-panel*.

*3. National Cancer Institute. ''Risk Factors—Radiation'' (2019). Available at: Risk Factors: Radiation—NCI (*canchttps://www.cancer.gov/about-cancer/causes-prevention/risk/radiationer.gov*) (last accessed September 5, 2025).

4. Hall EJ and Giaccia, A. (2011) Radiobiology for the Radiologist. 7th Edition, Lippincott Williams & Wilkins, Philadelphia. Chapter 2: Molecular Mechanisms of DNA and Chromosome Damage and repair, pp. 12–34, and Chapter 10: Radiation Carcinogenesis, pp. 135–158.

5. Joiner, M. and van der Kogel, A. (Eds) (2009), Basic Clinical Radiobiology. 4th Edition, CRC Press, London. Chapter 3: Cell Death After Irradiation: How, When and Why Cells Die (BG Wouters), pp. 27–40 and Chapter 7 (D Zips): Tumour Growth and Response to Radiation, pp. 78–101.

List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 892 be amended as follows:

PART 892—RADIOLOGY DEVICES

■ 1. The authority citation for part 892 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371

■ 2. Amend § 892.7000, as proposed to be added in Docket No. FDA–2025–N–5996, published elsewhere in this issue of the **Federal Register**, by adding paragraph (b)(2)(i) to read as follows:

§ 892.7000 Blood irradiator devices.

* * * * *

(b) * * * * *

(2) * * * * *

(i) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before [DATE OF THE LAST DAY OF THE 30TH FULL CALENDAR MONTH AFTER EFFECTIVE DATE OF FINAL RULE], for any blood irradiator as identified in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976, or that has, on or before [DATE OF THE LAST DAY OF THE 30TH FULL CALENDAR MONTH AFTER EFFECTIVE DATE OF FINAL RULE], been found to be substantially equivalent to any blood irradiator that was in commercial distribution before May 28, 1976. Any other blood irradiator identified in paragraph (b)(2) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–05322 Filed 3–17–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 260303–0061]

RIN 0648–BN58

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Texas Parks and Wildlife Department Fisheries Research

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the Texas Parks and Wildlife Department (TPWD) for authorization to take marine mammals incidental to fisheries research in the coastal bays of Texas, over the course of 5 years from the issuance of a final rule and Letter of Authorization (LOA). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS proposes regulations setting forth permissible methods of taking, other means of effecting the least practicable adverse impact on such marine mammal stocks (*i.e.,* mitigation measures), and requirements pertaining to monitoring and reporting such takes, and requests comments on the proposed regulations. NMFS will consider public comments prior to making any final decision on the promulgation of the requested MMPA regulations, and NMFS' responses to public comments will be summarized in the final rule announcing our decision.

DATES: Comments and information must be received no later than April 17, 2026.

ADDRESSES: A plain language summary of this proposed rule is available at: *https://www.regulations.gov/docket/NOAA-NMFS-2025-0141*. You may submit comments on this document, identified by NOAA–NMFS–2025–0801, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit *https://www.regulations.gov* and type NOAA–NMFS–2025–0801 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to the Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-

West Highway, Silver Spring, MD 20910–3225.

• *Fax:* (301) 713–0376.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

A copy of the TPWD's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-texas-parks-and-wildlife-departments-independent-fisheries*.

In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

This proposed rule, to be issued under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), establishes a framework for authorizing the take of marine mammals incidental to fisheries-independent research conducted by the TPWD in Texas bays and estuaries. TPWD fisheries research has the potential to take marine mammals due to possible physical interaction with fishing gear (*i.e.,* gillnets). TPWD submitted an application to NMFS requesting 5-year regulations and a letter of authorization (LOA) to take bottlenose dolphins (*Tursiops truncatus*) from seven stocks, by mortality/serious injury or injury (Level A harassment) incidental to research activities using gillnet fishing gear in Texas bays. The regulations would be valid for 5-years from the effective date of the final rule.

Legal Authority for the Proposed Action

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are promulgated (when applicable), and public notice and an opportunity for public comment are provided.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' (*i.e.,* mitigation) on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds and areas of similar significance, and the availability of the species or stocks for taking for certain subsistence uses, and must set the requirements pertaining to the mitigation, monitoring and reporting of the takings.

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I, provide the legal basis for proposing and, if appropriate, issuing 5-year regulations and associated Letters of Authorization. This proposed rule also identifies a suite of proposed mitigation, monitoring, and reporting requirements for TPWD's activities.

Summary of Major Provisions Within the Proposed Regulations

The following is a summary of the major provisions of this proposed rulemaking regarding TPWD's fisheries research:

• TPWD staff and others involved in the proposed research activities will be required to attend the Protected Species Safe Handling, Release, and Identification Workshops prior to conducting the fisheries research activities.

• TPWD would eliminate dolphin ''hot spot'' sampling grids where bottlenose dolphins have been taken more than once since the beginning of the survey or grids where multiple adjacent grids have had at least one bottlenose dolphin encounter.

• TPWD would minimize soak time by utilizing the ''last out/first in'' strategy for gillnets set in grids where bottlenose dolphins have been encountered within the last 5 years.

• TPWD would set only new or fully repaired gillnets thereby eliminating holes greater than 6 inches (in) (15 centimeter (cm)) stretched mesh.

• TWPD would set gillnets with minimal slack and a short marker buoy attached to the deep end of the net.

• Staff would immediately respond to any net disturbance observed while gear is soaking.

• TWPD would modify gillnets to avoid more than a 4- in (10-cm) gap between float/lead line and net when net is set.

• TWPD would conduct dedicated marine mammal observations at least 15 minutes prior to setting nets and avoid setting nets if dolphins are observed at or approaching within the survey area.

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization (IHA) is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (collectively referred to as ''mitigation''); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms used above are included in the relevant sections below and can be found in section 3 of the MMPA (16 U.S.C. 1362) and NMFS regulations at 50 CFR 216.103.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO)

216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an LOA) with respect to potential impacts on the human environment.

In accordance with the NEPA (42 U.S.C. 4321 *et seq.*) and NOAA policy and procedures (NOAA Administrative Order 216–6A and its Companion Manual), NMFS has prepared a draft environmental assessment (EA) analyzing the potential impacts of NMFS' proposed action of issuance of this rule and LOA(s). NMFS is seeking public comment on the draft EA. The draft EA is available at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-texas-parks-and-wildlife-departments-independent-fisheries* for a 30 day public comment period. NMFS will consider all comments submitted in response to this notice prior to concluding the NEPA process or making a final decision on the request for regulations and a LOA(s).

Summary of Request

On October 31, 2023, NMFS received a request from TPWD for a rulemaking and associated 5-year LOA to take marine mammals incidental to fisheries research activities. Following NMFS' review of the application, TPWD submitted a revised version on March 3, 2025. NMFS deemed TPWD's application adequate and complete on May 12, 2025. TPWD's request is for take of bottlenose dolphins by mortality and serious injury (M/SI) and by Level A harassment.

A notice of receipt of the application submitted by TPWD was published in the **Federal Register** on May 19, 2025, with a 30-day comment period. During the comment period NMFS received 50 comments from members of the public regarding TPWD's application for an incidental take authorization. Of the 50 comments received, 49 of them expressed general support for TPWD's request. One comment was opposed to issuing a LOA to TPWD citing that TPWD did not have a clear description in their application of how take was estimated for each stock of bottlenose dolphins, disagreed that TPWD's proposed gillnet configuration would allow entangled dolphins to breathe, and concerns that NMFS may not be able to make a negligible impact determination. NMFS has considered these comments in the preparation of this proposed rule.

Description of Proposed Activity

Overview

TPWD conducts a long-term standardized fishery-independent monitoring program to assess the relative abundance and size of finfish and shellfish in Texas bays. Results from this program are primarily used by TPWD to manage Texas' marine finfish and shellfish resources. Data gathered through the survey are also used by multiple other state and federal agencies, universities, non-governmental organizations, and the private sector. The use of gillnets during these surveys may result in take by Level A harassment (injury) or M/SI of marine mammals.

Dates and Duration

These gillnet surveys are conducted throughout the coastal bay system of Texas and occur in the spring and fall. The spring season begins with the second full week in April and extends for 10 weeks. The fall season begins with the second full week in September and extends for 10 weeks. TPWD expects to set 780 gillnets annually within the Texas bay system.

Specific Geographic Region

Gillnets would be used in each of the 10 major Texas bay systems: Sabine Lake, Galveston, Cedar Lakes, East Matagorda, Matagorda, San Antonio, Aransas, Corpus Christi, upper Laguna Madre, and lower Laguna Madre (see figure 1). Each bay is separated into 1 minute by 1 minute grid cells and sampling sites are chosen at random. These bays consist of open-bay bottom (*i.e.,* mainly sand and mud bottom) habitat which are influenced by ocean waters through inlets. Marshes and intertidal flats typically make up the edges of the bays and are made up of relatively shallow water (Armstrong 1987).

BILLING CODE 3510–22–P

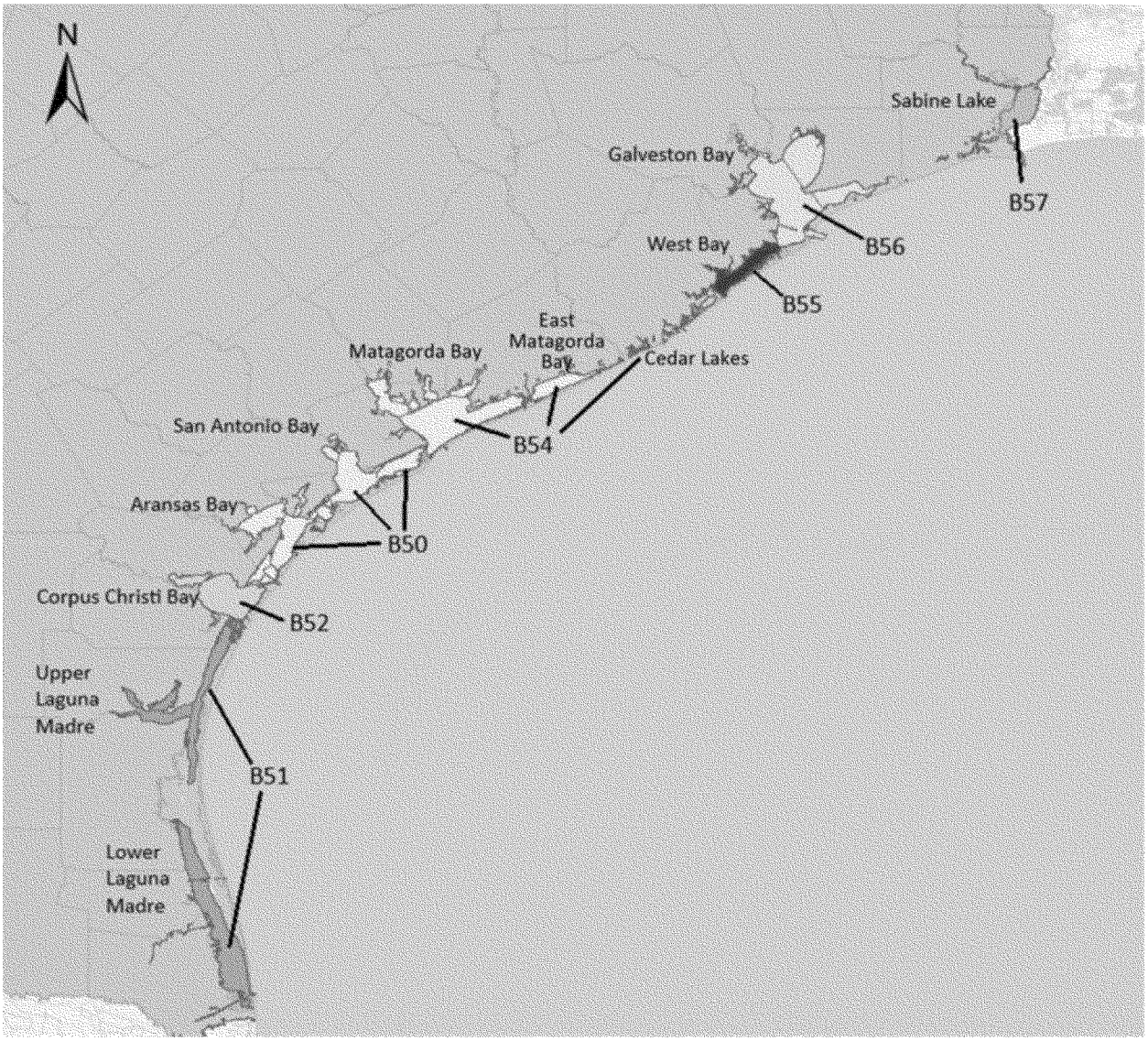

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Figure 1. Project Area for the TPWD Gillnet Sampling Activities

Detailed Description of the Specified Activity

Gillnet Gear and Sampling Description

The TPWD bay gillnet finfish surveys, conducted in the spring and fall, provide fishery-independent measures of adult and subadult finfish relative abundance, diversity, and age and size distributions in Texas waters. Samples collected from this survey provide data for genetics, life history, and age and growth analyses. Seasonal sampling helps to address seasonal differences in fish behavior, diversity, and relative abundance in the coastal bay systems of Texas. Nets are set at least 1 hour before sunset, soak overnight, and are retrieved within 4 hours of sunrise.

Each coastal bay is divided into 1 minute latitude by 1 minute longitude grids (see figure 6 a–f in TPWD's application). One grid is selected for each net to be set and that grid will only be chosen once in a given season (*i.e.,* spring or fall). Prior to each gillnet season, the grids that will be sampled that season are randomly selected from the subset of grids called gridlets. The specific sample sites are then randomly selected from gridlets (5 second latitude by 5 second longitude divisions, 144 per grid) that contain less than 15.2 m of shoreline. If it is determined in the field that the randomly selected gridlet cannot or should not be sampled, the nearest 15.2 m section that can be safely sampled is designated as an alternate. No more than one gillnet is set in the same grid on any night or is set more than one time in the same grid in a season. Gillnets set on the same night must be at least 1 kilometer (km) apart in all directions. If adjacent grids are randomly selected and are to be sampled on the same night, one of the grids is chosen at random and then a gridlet is selected. The gridlet in the adjacent grid is chosen from all gridlets that are at least 1 km from the initial selected site.

The gear configuration of the gillnets includes variable mesh sizes to target different size fishes. This includes juvenile and mature finfish species, which provide data on the size and age structure of the finfish community. The data collected in the TPWD bay gillnet sampling activities provide a fishery-independent measure of adult and subadult finfish abundance which can be used to complement fishery-dependent data and is used by TPWD to manage many of the coastal Texas finfish species.

The gillnets used by TPWD are made of monofilament mesh at 1.2 meters (m)

in height attached to a lead line made of a braided line with a solid core with a breaking strength of 22.7 kilograms at a length of 18.9 m. on the bottom of the net and a float line at the top of the net with hard plastic bullet shape floats spaced 101 cm to 114 cm apart. The total length of a net is 182.9 m with 45.7 m sections of 7.6 cm, 10.2 cm, 12.7 cm, and 15.2 cm stretched mesh joined together with monofilament line up the entire height of the net, with no gaps between the different mesh sizes, to make one continuous net (see figure 2 of TPWD's application).

The gillnets set by TPWD are set perpendicular to the shoreline with the smaller mesh end of the net anchored to the shoreline and the progressively larger mesh extending seaward for 182.9 m (see figures 4 and 5 of TPWD's application). When deployed the nets are pulled tight to remove any slack while the net is fished in turn, reducing the likelihood of marine mammal entanglement. Gear retrieval occurs at sunrise or no later than 1 hour after sunrise and within 4 hours of sunrise all nets are retrieved. TPWD typically fishes gillnets for 12 to 14 hours once the gillnets are set. TPWD's use of gillnets is likely to result in incidental take of bottlenose dolphins, including M/SI.

Gulf Finfish and Shellfish Trawl Surveys

TPWD conducts Gulf Finfish and Shellfish Trawl Surveys in open waters of the Texas Territorial Sea (state waters 0–13 (0–21 km) nautical miles adjacent to inlets of coastal bays) in waters seaward of the Texas shoreline to determine relative abundance, size, distribution, and species composition of various life history stages of fish and invertebrates.

These surveys are conducted in the same manner as the Interjurisdictional Fisheries Act (IJA) Open Bay Shellfish Trawl Survey, which outlines standardized gear configuration and sampling protocols for trawl gear for shellfish sampling. The trawl configuration is 6.1 m wide otter trawls with 38 millimeters (mm) stretched nylon multifilament mesh throughout. Trawl doors are 1.2 m long, and 0.5 m wide and constructed of 13 mm plywood with angle iron framework and iron runners. Trawls would be deployed from research vessels and towed at 4.8 km per hour (kmh), actively towed for 10 minutes, and retrieved aboard the vessel. As vessels tow the trawl gear the vessel would travel parallel to a designated fathom curve. TPWD's gulf trawls are identical in gear, speed, and duration as the bay trawls. TPWD has never incidentally taken a bottlenose dolphin or any other marine mammal during the gulf and bay trawls during the history of the program. On average the TPWD will deploy 80 gulf trawls per month/960 per year and 1,080 bay trawls per year. Given that there have been no incidental takes of bottlenose dolphins or any other marine mammal over the course of the trawl survey TPWD does not anticipate take to occur incidental to this activity.

Oyster Reef Surveys

Oyster reef surveys are conducted by TPWD to collect data on oyster populations in the surrounding coastal waters of Texas. Oyster dredge samples are collected from areas in which Eastern oysters form consolidated oyster reef/habitat and exhibit ≥0.2 m (6 in) vertical relief from adjacent bay bottom for a continuous distance of at least 91.4 m (300 ft) in length by 0.5 m (1.5 ft) in width. Sampleable reefs must be located at a water depth of ≥1 m (3 ft) during mean low tide on current nautical charts. All known mapped oyster reefs/habitats are included as oyster habitat strata for potential oyster dredging sites.

The coastal fisheries oyster dredge gear used by TPWD during the oyster surveys consist of a frame and a bag. The frame, constructed with 13-mm cold rolled steel rod, is 0.5 m wide, 0.24 m high and 1 m long (figure 1 of TPWD's application). The bag, constructed with metal rings, metal s-hooks and nylon rope, is 0.36 m deep with 76-mm stretched mesh braided nylon solid core webbing (see figure 1 of TPWD's application). The dredge is deployed from either skiffs or research vessels, towed along the known contour of the oyster reef at 4.8 kmph for 30 seconds, and retrieved aboard the vessel. Due to the small size of the oyster dredges, structure, short tows, and slow speeds TPWD considers this gear to be a very low risk for bottlenose dolphin encounters. The oyster dredge is towed approximately 100 times per month and 1,200 times per year.

TPWD is also conducting comparison studies using oyster tongs to collect oyster reef data. Hydraulic tongs are 0.447 m wide by 0.532 m deep (covering a total area of 0.238 m^2). They are affixed to a hydraulic winch via steel cable or winch rope. When deployed, tongs are lowered from the side of a vessel and allowed to rest completely on the bottom before being hydraulically closed and retrieved. NMFS does not expect the use of the oyster dredge or the oyster tongs by TPWD to result in the take of bottlenose dolphins or any other marine mammal.

Habitat Mapping

TPWD also utilizes bathymetric sidescan sonar and singlebeam echosounders to characterize and map aquatic habitats, select sites for oyster restoration, and conduct post-restoration habitat monitoring. Habitat mapping is critical to informing resource management decisions, allowing TPWD to evaluate how habitat distribution and health have changed over time, and prioritize conservation and restoration efforts to address habitat loss in certain locations.

Using sonar is critical to the success of oyster restoration projects as it is used in both the planning and evaluation of these projects. TPWD uses non-impulsive intermittent sonar surveying equipment, including multi-frequency bathymetric sidescan sonar, single-frequency singlebeam echosounders, and single-frequency split-beam echosounders. TPWD collects bathymetric sidescan sonar data using a dual-frequency EdgeTech 6205 units. This unit operates at both 230 and 550 kilohertz (kHz) simultaneously, has a maximum source level of 200 dB (decibels) ref 1 uPa (micro Pascale), a pulse rate of 15 seconds and a pulse duration of 1 millisecond (ms). TPWD also uses various recreational grade sidescan sonar units, such as Humminbird and Garmin, for intermittent survey work for very small projects. The frequency of these units ranges from 200 kHz to 1200 kHz. These units are used to inform sampling locations for fisheries-independent oyster monitoring, as well as for planning and monitoring oyster restoration projects. All units used are in a downward-looking position with no tilt. These sidescan sonars operate at a frequency outside the hearing range of bottlenose dolphins (*i.e.,* >160 kHz) and therefore, NMFS does not expect the use of this sonar to result in take of bottlenose dolphins or any other marine mammal.

TPWD also collects singlebeam echosounding data using Biosonics DT–X systems with one single-beam 120 kHz echosounder and one split-beam 426 kHz echosounder. The Biosonic DT–X system has user-defined ping rate ranging from 0.01 to 30 pings per second and is typically operated at 10 pings per second. Pulse duration is user-selectable between 0.1 to 1.0 ms and is typically operated at 0.2 ms.

The beam pattern of the Biosonics DT–X 120 kHz is extremely narrow (*i.e.,* 10 degrees) and at that frequency and echosounder is oriented downward (not obliquely) in waters with an average depth of 2.5 m, thus ensonifying a very

small circular area approximately 0.5 m in diameter. The echosounder uses a rapid duty cycle of 0.002 with pulse durations of 0.2 ms and a pulse rate of 10 pulses per second. This results in an extremely short duration of ensonification and reduces the effective source level (NMFS 2020). Because of the orientation, shallow water depths (<4 m), beam pattern, and rapid duty cycle, we would only expect minimal exposures within this frequency. A study investigating the impact of a similar echosounder system as the one used by TPWD (a 120 kHz singlebeam echosounder with a beam width of 7 degrees and a source level of 230 dB) found that likelihood of TTS occurs only in a small volume of water immediately under the transducer (Boebel *et al.* 2005). NMFS does not expect the take of any marine mammals incidental the use of these echosounders during habitat mapping activities.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of TPWD's application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs) (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA 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 (as described in NMFS' SARs) defined in section 3 of the MMPA (16 U.S.C. 1362(20)). Since serious injury or mortality is anticipated to be authorized under this action, PBR and annual M/SI from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

To provide a background for how estuarine bottlenose dolphin stocks are identified, we provide the following excerpt from the Bottlenose Dolphin Stock Structure Research Plan for the Central Northern Gulf of America (GOA) (NMFS 2007) which more specifically describes the stock structure of bottlenose dolphins within the bays, sounds, and estuaries of the GOA. The distinct stock status for each of the 31 inshore areas of contiguous, enclosed, or semi-enclosed bodies of waters is community-based. That is, stock delineation is based on the finding, through photo-identification (photo-ID) studies, of relatively discrete dolphin ''communities'' in the few GOA areas that have been studied (Waring *et al.,* 2007). This finding was then generalized to all enclosed inshore GOA waters where bottlenose dolphins exist. A ''community'' consists of resident dolphins that regularly share large portions of their ranges and interact with each other to a much greater extent than with dolphins in adjacent waters. The term emphasizes geographic and social relationships of dolphins. Bottlenose dolphin communities do not necessarily constitute closed demographic populations, as individuals from adjacent communities may interbreed.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs. All values presented in table 1 are the most recent available at the time of publication (including from the draft 2024 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES[1] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N)[2]	Stock abundance (CV, N_{min}, most recent abundance survey)[3]	Potential biological removal	Annual M/SI[4]
Order Artiodactyla—Cetacea—Odontoceti (toothed whales)						
Family Delphinidae:						
Bottlenose Dolphin.	*Tursiops truncatus.*	Laguna Madre	-, -, Y	80 (1.57, UNK, 1992)	UND	0.8
		Matagorda Bay, Tres Palacios Bay, Lavaca Bay	-, -, Y	61 (0.45, UNK, 1992)	UND	0.4
		Nueces Bay, Corpus Christi	-, -, Y	58 (0.61, UNK, 1992)	UND	0.2
		Copano Bay, Aransas Bay, San Antonio Bay, Redfish Bay, Espiritu Santo Bay.	-, -, Y	55 (0.82, UNK, 1992)	UND	0.6
		Galveston Bay, East Bay, Trinity Bay	-, -, N	842 (0.08, 787, 2016)	6.3	1
		West Bay	-, -, N	37 (0.05, 35, 2015)	0.3	0
		Sabine Lake	-, -, N	122 (0.19, 104, 2017)	0.9	0

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*).

[2] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. As discussed below N_{min} values for the Copano Bay/Aransas Bay/San Antonio Bay/Redfish Bay/Espiritu Santo Bay Stock, Nueces Bay/Corpus Christi Bay Stock, and the Laguna Madre Stocks have been updated based on a photo identification survey conducted by Texas A&M University.

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

As indicated above, bottlenose dolphins (with seven managed stocks) listed in table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur.

Texas Bay, Sound, and Estuary (BSE) Bottlenose Dolphins

Bottlenose dolphins have been identified in seven distinct coastal stocks within the inner estuaries of Texas (table 1). Shane (1977) and Gruber (1981) documented year-round residency of individual common bottlenose dolphins in some of the estuarine waters of Texas coastal bays. Analysis of genetic data supports the fact that many of the coastal Texas stocks are comprised of resident populations (NMFS 2021). In general, the Texas coastal stocks only occur in discrete BSE waters. However, it has been documented that limited mixing does occur in the passes of the Gulf of America with other non-resident stocks (NMFS 2021).

NMFS has acknowledged that as additional information about these BSE stocks becomes available, combination or further division of the stocks or modification of the stock boundaries may be warranted (NMFS 2021). Population size across the seven coastal stocks in Texas is a wide range (*e.g.,* N 37–842).

NMFS used unpublished data provided by the Southeast Fisheries Science Center (SEFSC) for a population estimate to update the Matagorda Bay, Tres Palacios Bay, Lavaca Bay stock. The SEFSC conducted stock structure research (biopsy sampling surveys) from 2012–2014. During the biopsy sampling, photos were taken for photo-ID and 285 individual dolphins with distinct dorsal fins were identified within this stock's boundaries (NMFS SEFSC, UNPUBLISHED DATA). This provided an abundance estimate (N_{best}) of 150 individuals from this stock. The N_{best} value of 150 individuals was used to calculate an estimated PBR for this stock given one is not available in the recent SARs.

Recently, the SEFSC, in collaboration with Texas A&M University researchers, developed provisional minimum population estimates or N_{mins} for three of the seven stocks that had unknown N_{mins}; these included the Copano Bay/Aransas Bay/San Antonio Bay/Redfish Bay/Espiritu Santo Bay Stock, Nueces Bay/Corpus Christi Bay Stock, and the Laguna Madre Stock. The report used photo-identification data collected by Texas A&M University of these stocks from 2018 to 2025. Individual animals were assigned to a stock based on the majority of their sighting locations. For individuals sighted one time, data was examined from animals seen multiple times to estimate the probability of a given stock assignment conditional on its being seen within a given stock area on its first observation. A transient area was defined for the Aransas Pass and animals sighted in that area were not included in the population estimate due to the likelihood of sighted animals being from coastal stocks. Additional details on the methods used by the SEFSC are in the 2025 report which is available on the NMFS website at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-texas-parks-and-wildlife-departments-independent-fisheries*.

NMFS then used these updated N_{min} values to calculate PBR values for the three stocks (Garrison 2025). The PBR formula NMFS used to calculate PBR is (N_{min} * 0.5R_{max} * F_r) where R_{max} is the maximum net productivity rate and the F_r is the recovery factor. The R_{max} and the F_r values for bottlenose dolphins are available in table 1 of the draft 2024 SARs. The data used for each stock and resultant PBR is shown in table 2.

The stocks for which NMFS proposes to authorize take associated with the TPWD's gillnet fisheries research are grouped in the GOA BSE SAR. As discussed above, NMFS received data from Texas A&M researchers and consulted with the SEFSC to develop updated N_{min} estimates for the Copano Bay/Aransas Bay/San Antonio Bay/Redfish Bay/Espiritu Santo Bay stock, Nueces Bay/Corpus Christi Bay stock, and the Laguna Madre stock. Further, information was available from the SEFSC for the Matagorda Bay/Tres Palacios Bay/Lavaca Bay stock that informed population estimates. For the remaining stocks NMFS is proposing to use the information from the SARs for M/SI and N_{min} values.

TABLE 2—CALCULATED PBR VALUES FOR THREE STOCKS OF TEXAS BSE BOTTLENOSE DOLPHINS

Stock	N_{min} (Garrison 2025)	R_{max}	F_r	PBR
Copano Bay, Aransas Bay, San Antonio Bay, Redfish Bay, Espiritu Santo Bay	669	0.04	0.4	5
Nueces Bay, Corpus Christi	1,744	0.04	0.4	14
Laguna Madre	222	0.04	0.4	2

NMFS considered take by M/SI relative to residual PBR (*i.e.,* the PBR value subtracted from the estimate of ongoing anthropogenic M/SI). NMFS gathered information on reported serious injury determinations from Maze-Foley and Garrison (2024) and reported mortalities from the Marine Mammal Stranding Database (excluding those that have occurred during the proposed TPWD surveys) to estimate annual rates of M/SI (table 7) (see the Negligible Impact Determination section for additional description of residual PBR and how it is calculated). NMFS identified five mortalities and 10 serious injuries over the 2019 to 2023 time period as analyzed in Maze-Foley and Garrison (2024) (the most recent information available). Three of the five mortalities were from hook and line fishing gear, two of which were from the Copano Bay/Aransas Bay/San Antonio Bay/Redfish Bay/Espiritu Santo Bay and the remaining one from the Nueces Bay/Corpus Christi Bay stocks. The other two mortalities were determined to be from vessel strikes and were from the Nueces Bay/Corpus Christi Bay and Galveston Bay/East Bay/Trinity Bay stocks. Of the 10 serious injuries five were from the Galveston Bay/East Bay/Trinity Bay stock from hook and line gear, trap pot gear, and entanglements with unidentified fishing gear. Illegal gillnet gear entanglements and a vessel strike resulted in three serious injuries of the Laguna Madre stock. The remaining two serious injuries were from entanglements in unknown trap/pot gear from the Copano Bay/Aransas Bay/San Antonio Bay/Redfish Bay/Espiritu Santo Bay stock and a vessel strike of the Nueces Bay/Corpus Christi Bay stock.

NMFS has updated the M/SI estimates for all of the stocks where take is proposed. The M/SI data presented in the most recent SARs update for these BSE stocks was from 2015–2019. During the development of this proposed rule NMFS reviewed M/SI data from Maze-Foley and Garrison (2024) and the Marine Mammal Stranding Database which included data from 2019–2023. These data updated the annual M/SI estimates for all BSE stocks of bottlenose dolphins as shown in table 7 and are different from what is presented in the most recent update to the bottlenose dolphin BSE SARs report (see Negligible Impact Determination). This data represents the best available data for estimating the annual M/SI values for these stocks, including correcting an error for the Galveston Bay, East Bay, Trinity Bay stock where two serious injuries were assigned to the wrong stock incorrectly in Maze-Foley and Garrison (2024).

Unusual Mortality Events (UME)—The marine mammal UME program was established in 1991. A UME is defined under the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. From 1992 through 2012, five UME events have occurred for Texas bottlenose dolphins and each has been closed. Three of the five UME causes were undetermined and the remaining two were caused by infectious diseases and biotoxins. More information related to UMEs is available on the NMFS website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events*.

Biological Important Areas (BIAs)—In 2015, NOAA's Cetacean Density and Distribution Mapping Working Group identified BIAs for 24 cetacean species, stocks, or populations in 7 regions within U.S. waters, including the GOA. For BSE bottlenose dolphin stocks in the GOA the BIAs are areas in which small and resident populations are concentrated. BIAs are region-, species-, and time-specific.

Small and Resident Population: Areas and months within which small and resident populations occupying a limited geographic extent exist.

The delineation of BIAs does not have direct or immediate regulatory consequences. Rather, the BIA assessment is intended to provide the best available science to help inform regulatory and management decisions under existing authorities about some, though not all, important cetacean areas in order to minimize the impacts of anthropogenic activities on cetaceans and to achieve conservation and protection goals. In addition, the BIAs and associated information may be used to identify information gaps and prioritize future research and modeling efforts to better understand cetaceans, their habitat, and ecosystems. Table 3 provides a list of BIAs for bottlenose dolphins found within the TPWD's fisheries research areas.

TABLE 3—BIAS WITHIN THE TPWD FISHERIES RESEARCH AREA

BIA name	BIA	Time of year	Size kilometers (km^2)
Galveston Bay	Small and Resident	Year-round	1,222
San Luis Pass	Small and Resident	Year-round	143
Matagorda Bay and Espiritu Santo Bay	Small and Resident	Year-round	740
Aransas Pass	Small and Resident	Year-round	273

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Gear Interaction

As noted in the Detailed Description of the Proposed Activity section of this document, gillnet gear is the only gear used by TPWD that is expected to result in take of bottlenose dolphins. All other gears are not expected to have effects on marine mammals.

The gillnets used by the TPWD are similar to those used in gillnet fisheries throughout the GOA and the Atlantic. Read *et al.* (2006) estimated marine mammal bycatch in U.S. fisheries from 1990 to –99 and derived an estimate of global marine mammal bycatch by expanding U.S. bycatch estimates using data on fleet composition from the United Nations Food and Agriculture Organization. Most U.S. fisheries bycatch for cetaceans (84 percent) occurred in gillnets. Interactions and entanglements with gillnets may result in take by M/SI or at the very least injury (Level A harassment) for bottlenose dolphins (Read *et al.,* 2006).

From 2019 through 2023, 243 commercial gillnet sets from the Atlantic coast of Florida throughout the GOA were observed by observers from the SEFSC. Effort has steadily declined in the strike gillnet fishery for king mackerel (*Scomberomorus cavalla*) and in the sink and drift gillnet fishery for Spanish mackerel (*Scomberomorus maculatus*) in the Atlantic and GOA. Incidental take of protected species, such as sea turtles and marine mammals, remained a low occurrence. A total of three protected species interacted with gillnets over the 5-year period, including one loggerhead sea turtle, one smalltooth sawfish, and one bottlenose dolphin and all were released alive (NMFS 2024).

TPWD has a history of taking bottlenose dolphins incidental to their gillnet research in the coastal bays of Texas. From 1983 through 2024, TPWD has set 31,386 gillnets throughout their sampling areas in the coastal bays of Texas. Over the 41 years of the survey TPWD has recorded 44 encounters with bottlenose dolphins with gillnet gear. NMFS began making injury determinations in 2007 for marine mammal injury events including entanglements with TPWD gillnet gear as reported to NMFS (77 FR 3233, January 23, 2012). Of the 44 dolphin encounters recorded by TPWD, 6 have been mortalities, 6 have been determined to be serious injuries, 10 were determined to be non-serious injuries (Level A harassment), 3 have not yet been determined or could not be determined, and the remaining 19

encounters with dolphins have an unknown disposition.

Potential Effects on Marine Mammal Habitat

Effects on Prey—Gillnet sampling is designed to monitor finfish populations and some of these finfish species could be potential prey for bottlenose dolphins in the area. Habitat use by bottlenose dolphins is greatly dependent on prey availability. McDaniel (2022) grouped bottlenose dolphin prey species in Galveston Bay in order of importance based on their highest proportion consumed. White mullet (*Mugil curema*) was the highest proportion of prey species consumed at 25.3 percent of the overall diet of bottlenose dolphins. The second highest proportion of prey consumed by bottlenose dolphins in Galveston Bay was a group of species including Atlantic brief squid (*Lolliguncula brevis*), hardhead catfish (*Ariopsis felis*), and striped mullet (*Mugil cephalus*) at 21.0 percent. Recent analysis of fishery independent data collected by trawl and gillnets throughout the Texas coast indicate increasing abundance trends for striped mullet and Atlantic brief squid which indicate that gillnet sampling is not having a negative impact on these prey species for bottlenose dolphins (Williford and Anderson 2024). Gillnet sampling conducted by TPWD is limited in scope as compared with the overall available bay regions dolphins have to pursue prey species. The small number of prey species removed from the water during these gillnet sets are not expected to affect the availability of prey species for bottlenose dolphins in the coastal bays of Texas.

Physical Habitat—The use of gillnets by TPWD would be fished in habitat that is used by BSE stocks of bottlenose dolphins. Habitat used by these stocks of bottlenose dolphins ranges from shallow seagrass beds to dredged and natural channels and spoil island (Shane 1990; Scott *et al.,* 1996; Barros 1993; Allen *et al.,* 2000). Overall, the available data proposes that the range of diverse habitat used by bottlenose dolphins is influenced by foraging activity, seasonal shifts, and other behaviors such as socializing, traveling and resting.

TPWD does not set nets across the mouth of any inlets or channels during their sampling. Gillnets are primarily set in shallow waters with most of the gear either floating at the surface or suspended in the water column. The only part of the gillnet that makes contact with the sea floor is the lead line which is less than 1.27 cm in width and 182.9 m in length. This represents a very small area (2.4 m^2) when compared to the available habitat of bottlenose dolphins within the Texas bay systems. Anchors similar to the size of boat anchors are deployed to keep the net in place. The deployment and retrieval of the nets are completed by hand to avoid any disturbance to sea grass in the area.

As described above, the potential for TPWD's gillnet research to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical habitat is considered to be insignificant for bottlenose dolphins. Effects on habitat will not be discussed further in this document.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization under the rule, which will inform NMFS' consideration of ''small numbers,'' the negligible impact determinations, and impacts on subsistence uses. When discussing take, we consider three manners of take: mortality, serious injury, and non-serious injury (Level A harassment). Serious injury is defined as an injury that could lead to mortality while injury refers to an injury that could not lead to mortality. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment). No takes by Level B harassment are expected from TPWD's activities.

TPWD has a history of taking marine mammals incidental to their fisheries research using gillnet gear. The take resulting from gear interaction can range from mortality, serious injury, and Level A harassment (injury). TPWD has predicted the number of takes that would occur over the 5-year period of the rulemaking based on past encounters within the established stock boundaries of each Texas BSE bottlenose dolphin stock where take is expected. Each of these stocks has a respective survey block number (*e.g.,* B50) (also see figure 1) and TPWD further refined the survey blocks with 1 minute latitude by 1 minute longitude blocks where gillnets would be set (see figure 6a–f of TPWD's application). TPWD used a catch to effort calculation to estimate their expected annual take numbers.

In estimating take, TPWD used historical interactions data with bottlenose dolphins from 1983–2024 (table 4). Using this data, TPWD evaluated 5-year rolling averages for each survey block deriving the average number of encounters over each set of 5-years between 1983–2024. For example, in block 50 from 1983 through 2024, two rolling 5-year time periods had five encounters and one period had six. For this particular block, TPWD selected five encounters as the appropriate 5-year rolling total because it had the higher occurrence (twice between 1983–2024). TPWD chose the lower 5-year rolling total for this block since there was a high probability of that level of take occurring during the effective period of the requested LOA. For each of the blocks with interactions 5-year rolling totals were developed. TPWD then selected the highest recurring 5-year rolling totals for their estimated take levels (table 5). TPWD used these totals to inform their take request over the 5-year period of this proposed rule for each block with interactions of bottlenose dolphins (see Figure 1 for depiction of blocks relative to the different bays).

TABLE 4—TPWD'S HISTORICAL INTERACTIONS WITH BOTTLENOSE DOLPHINS FROM 1983 THROUGH 2024

Blocks with interactions	Number of interactions
B50	19
B51	8
B52	8
B54	9

TABLE 5—TPWD'S 5-YEAR HIGHEST OCCURRING ROLLING TOTALS PER BLOCK

	B50	B51	B52	B54
Number of Interactions	5	3	3	3
Years	1998–2002; 2012–2016	1989–1993	1996–2000	2019–2024

In order for TPWD to assign the appropriate levels of take as M/SI or Level A harassment from the 5-year averages, TPWD calculated the expected percentages of those dispositions on an annual basis. To calculate those percentages TPWD used catch and effort from each block in the steps below.

- TPWD first assigned the bottlenose dolphins with an unknown disposition (either mortality or released alive) based on the proportion of encounters with known dispositions in the same given survey block. Based on these proportions the number of unknowns in each survey block were assigned to either a released alive or mortality determination.
- TPWD then calculated the expected number of bottlenose dolphin mortalities and individuals released alive per set for each block including the newly assigned unknown dolphins from the preceding step.
- TPWD then used serious injury determinations (either serious or non-serious) provided by NMFS for each of their dolphin encounters with gillnets, to calculate the expected number of non-serious injuries and serious injuries from the expected number of dolphins to be released alive per set.
- TPWD multiplied the expected number of dolphins to be released alive by the proportions of serious injury to total injury determinations and the proportion of non-serious injury determinations to total injury determinations to calculate the expected number of injuries and serious injuries per set.
- To determine the expected number of M/SI encounters per year, TPWD added the calculated number of mortalities and serious injuries per set from the steps above and then multiplied that number by the number of sets per year in the given survey block.
- A similar calculation was completed to determine the number of expected non-serious injuries per year.

A detailed example of the catch and effort calculation steps is available in Appendix 5 of TPWD's application for block 50, the Copano Bay/Aransas Bay/San Antonio Bay/Redfish Bay/Espiritu Santo Bay stock.

Once the expected annual take numbers by Level A harassment (injuries) and M/SI was calculated for each block, TPWD calculated the percentages of expected take by Level A harassment and take by M/SI on an annual basis. In the final step, TPWD used the annual percentages and multiplied them by the 5-year rolling totals as described above for each block (table 5) to assign the appropriate levels of take by Level A harassment and M/SI from a given 5-year rolling total.

TPWD has not had any encounters in West Bay (block 55), Galveston Bay/East Bay/Trinity Bay (block 56), and Sabine Lake (block 57). For these blocks TPWD requested one take by M/SI and one take by injury over the course of the 5-year period of this proposed rule. TPWD elected to request take for these blocks because there is a potential for interactions with bottlenose dolphins from stocks in these areas.

NMFS agrees with the calculations proposed by TPWD and is proposing to authorize the amount of take outlined in table 6.

TABLE 6—PROPOSED TOTAL TAKE BY STOCK ANNUAL AND OVER THE 5-YEAR REGULATIONS FOR TPWD GILLNET FISHERIES RESEARCH

Stock	Total take by injury (Level A harassment) over the 5-years	Total take by M/SI over the 5-years	Total take over the 5-years
Copano Bay/Aransas Bay/San Antonio Bay/Redfish Bay/Espiritu Santo Bay	2	3	5
Laguna Madre	1	2	3
Nueces Bay/Corpus Christi Bay	1	2	3
Matagorda Bay/Tres Palacios Bay/Lavaca Bay	1	2	3
West Bay	1	1	2
Galveston Bay/East Bay/Trinity Bay	1	1	2
Sabine Lake	1	1	2

Proposed Mitigation

In order to issue an LOA under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (the last consideration not being applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (*e.g.,* likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (*i.e.,* probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

TPWD would implement a number of measures that could reduce the likelihood of an entanglement of a bottlenose dolphin during the use of gillnet gear during their research.

Gillnet Gear Measures

- Only new or fully repaired gillnets are used thereby eliminating any hole size greater than 6 in (15 cm) stretched mesh.
- TPWD must use gillnets with 2,101 hangings which connect the net to the float and lead line, with all hangings less than or equal to 4 in (10 cm) along the float and lead line to reduce entanglements.

• TPWD must set gillnets to ensure each gillnet is set as tight as possible from the surface to the seafloor and have marker buoys attached with ropes to the junctures of each mesh size and the end of the net as short as possible.

Gillnet Sampling Measures

• If any bottlenose dolphins are present deployment of gillnets would not occur until all of the dolphins have left the area.

• If bottlenose dolphins enter the area while a gillnet is being set, the lead line would be raised and lowered repeatedly to encourage the animals to leave the site. If bottlenose dolphins remain in the area, the gillnet would hauled back onto the vessel, and an alternative site is selected.

• Any live captured marine mammals must be released from the gillnet gear and returned to the water as soon as possible with no gear or as little gear remaining on the animal as possible. Animals must be released without removing them from the water.

• TPWD has eliminated sampling sites where bottlenose dolphins have been encountered more than once in a single grid or sites where multiple adjacent grids have had at least one dolphin encounter. These grids include: Aransas Bay grids 280, 290, 291, 300, 301, and 308 (figure 6c in TPWD application); Corpus Christi Bay grids 8, 20, and 132 (figure 6b in TPWD application); and Lower Laguna Madre grids 47, 318, and 319 (figure 6a in TPWD application).

• At sites where marine mammals have been encountered within the last 5-years, gillnet soak time is minimized by utilizing the ''last out/first in'' strategy. A net set in this manner will be deployed last for the day and retrieved first on the next day which may reduce soak times by as much as 6.6 hours. This procedure would be implemented in six sampling grids.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

Section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that sufficient information about the action and its proposed effects on marine mammals and their habitat is collected.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,

• Mitigation and monitoring effectiveness.

Staff Training

• TPWD staff would be required to attend Safe Handling, Release, and Identification Workshops. TPWD would also ensure that at least one staff member on every gillnet sampling trip has had the training.

• Staff meetings are held prior to the start of each gillnet season to go over ''Special Instructions for Handling Bottlenose Dolphins'' in the TPWD Marine Resource Monitoring Operations Manual (appendix 6 of TPWD's application) including scanning for the presence of dolphins prior to gillnet sets, scanning nets for entanglements, and what to do if there is an entanglement.

Visual Monitoring by Staff

• When approaching a gillnet site, TPWD staff that are setting the net will slow the vessel and bring it off plane between 600 and 1,000 ft (183 and 305 m) from the shoreline. All staff members would scan the surface of the water for 15-minutes to watch and listen for surface activity prior to setting the nets.

• Should a bottlenose dolphin be observed during the 15-minute observation period at the site, the net would not be deployed. The net may only be deployed if the bottlenose dolphins are observed swimming on a path away from the site consistently for 15 minutes or are not re-sighted within 15 minutes.

Reporting

TPWD currently reports marine mammal entanglements to NMFS Southeast Regional Office (SERO). The proposed regulations would standardize a comprehensive reporting scheme and require TPWD to report all incidents of marine mammal interaction to the Office of Protected Resources (OPR) and NMFS SERO within 48 hours of occurrence. TPWD should also provide any supplemental information to OPR and SERO upon request. Information related to marine mammal interaction (*e.g.,* animal captured or entangled in research gear) must include the following:

• Time, date, and location (latitude/longitude) of the incident;

• Description of the incident including, but not limited to, monitoring prior to and occurring at time of incident;

• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility);

• Description of the animal(s) involved (*e.g.,* size, age class);

• Water depth and net location where entangled;

• Nature of the entanglement (*i.e.,* part(s) of the animal(s) entangled, where in the net it was entangled);

• Fate of the animal(s);

• Detailed description of events, including how the animal(s) was disentangled and its behavior upon release, including signs of injury (if alive); and

• Photographs or video footage of the animal(s).

TPWD would also be required to submit an annual report to OPR no later than 90 days following the end of the fall sampling season. TPWD would provide a final report within 30 days following resolution of comments on the

draft report. These reports shall contain, at minimum, the following:

- Locations and time/date of all net sets;
- All instances of marine mammal observations and descriptions of any mitigation procedures implemented or not implemented and why;
- A written evaluation of the effectiveness of TPWD mitigation strategies in reducing the number of marine mammal interactions with survey gear, including gear modifications and best professional judgment and suggestions for changes to the mitigation strategies, if any; and
- A summary of all relevant marine mammal training and any coordination with OPR.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, and specific consideration of take by M/SI previously authorized for other NMFS research activities).

The MMPA requires that PBR be estimated in SARs and that it be used in applications related to the management of take incidental to commercial fisheries (*i.e.,* the take reduction planning process described in section 118 of the MMPA and the determination of whether a stock is ''strategic'' as defined in section 3 of the MMPA). While nothing in the statute requires the application of PBR outside the management of commercial fisheries interactions with marine mammals, NMFS recognizes that as a quantitative metric, PBR may be useful as a consideration when evaluating the impacts of other human-caused activities on marine mammal stocks. Outside the commercial fishing context, and in consideration of all known human-caused mortality, PBR can help inform the potential effects of M/SI requested to be authorized under section 101(a)(5)(A) of the MMPA. As noted by NMFS and the U.S. Fish and Wildlife Service in our implementing regulations for the 1986 amendments to the MMPA (54 FR 40341, September 29, 1989), the Services consider many factors, when available, in making a negligible impact determination, including, but not limited to: (1) the status of the species or stock relative to optimum sustainable population (OSP) (if known); (2) whether the recruitment rate for the species or stock is increasing, decreasing, stable, or unknown; (3) the size and distribution of the population; and (4) existing impacts and environmental conditions. In this multi-factor analysis, PBR can be a useful indicator for when, and to what extent, the agency should take an especially close look at the circumstances associated with the potential mortality of the proposed action, along with any other factors that could influence annual rates of recruitment or survival.

PBR is defined in Section 3 of the MMPA 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 OSP and, although not controlling, can be one measure considered among other factors when evaluating the effects of M/SI on a marine mammal species or stock during the section 101(a)(5)(A) process. OSP is defined in section 3 of the MMPA as the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element. A primary goal of the MMPA is to ensure that each species or stock of marine mammal is maintained at or returned to its OSP.

PBR values are calculated by NMFS as the level of annual removal from a stock that will allow that stock to equilibrate within OSP at least 95 percent of the time and is the product of factors relating to the minimum population estimate of the stock (N_{min}); the productivity rate of the stock at a small population size; and a recovery factor. Determination of appropriate values for these three elements incorporates significant precaution, such that application of the parameter to the management of marine mammal stocks may be reasonably certain to achieve the goals of the MMPA. For example, calculation of the minimum population estimate (N_{min}) incorporates the precision and variability associated with abundance information, while also providing (typically the 20th percentile of a log-normal distribution of the population estimate) reasonable assurance that the stock size is equal to or greater than the estimate (Barlow *et al.,* 1995). In general, the three factors are developed on a stock-specific basis in consideration of one another in order to produce conservative PBR values that appropriately account for both imprecision that may be estimated as well as potential bias stemming from lack of knowledge of a particular stock (Wade 1998).

When considering PBR during evaluation of effects of M/SI under MMPA section 101(a)(5)(A), we utilize a two-tiered analysis for each stock for which M/SI is proposed for authorization.

We first compare the total human-caused average annual M/SI estimate from all sources, including the M/SI proposed for authorization from the specific activity, to PBR. If the total M/SI estimate is less than or equal to PBR, then the specific activity is considered to have a negligible impact on that stock. The goal of the assessment is to determine whether total annual human-caused mortality, including from the specified activity, would exceed PBR. To aid in the evaluation and get a clearer picture of the amount of annual M/SI that remains without exceeding PBR, for each species or stock, we first calculate a ''residual PBR,'' which equals PBR minus the ongoing annual human-caused M/SI (*i.e.,* Residual PBR = PBR—(best available annual M/SI estimate + other M/SI authorized under section 101(a)(5)(A) of the MMPA (where relevant))). If the ongoing human-caused M/SI from other sources does not exceed PBR (*i.e.,* the residual PBR is a positive number), we consider how the proposed authorized incidental M/SI from the specified activities being evaluated compares to residual PBR using the framework in the following paragraph. If the ongoing anthropogenic

mortality from other sources already exceeds PBR (*i.e.,* the residual PBR is a negative number), we conduct additional analysis (described below as ''Tier 2'' analysis).

To reiterate, if the M/SI from the specified activity does not exceed PBR, the impacts of the authorized M/SI on the species or stock are generally considered to be negligible. As a simplifying analytical tool in the evaluation, we first consider whether the M/SI from the specified activities could cause incidental M/SI that is less than 10 percent of residual PBR, which we consider an ''insignificance threshold.'' If so, we consider M/SI from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic M/SI for the marine mammal stock in question that alone will clearly not adversely affect annual rates of recruitment and survival and for which additional analysis or discussion of the anticipated M/SI is not required because the negligible impact standard clearly will not be exceeded on that basis alone.

When the M/SI from the specified activity is above the insignificance threshold, it does not indicate that the M/SI associated with the specified activities is necessarily approaching a level that would exceed negligible impact. Rather, it is used as a cue to look more closely at if and when the M/SI for the specified activity approaches residual PBR (*i.e.,* the closer the M/SI from the specified activity is to 100 percent residual PBR). In that case, it becomes increasingly necessary to carefully consider whether there are other factors that could affect reproduction or survival (*e.g.,* take by Level A and/or Level B harassment that has been predicted to impact reproduction or survival of individuals) or whether any other considerations should be taken into account (*e.g.,* as information that illustrates high uncertainty involved in the calculation of PBR for some stocks).

Recognizing that the impacts of harassment of any authorized incidental take (by Level A or Level B harassment from the specified activities) would not combine with the effects of the authorized M/SI to adversely affect the stock through effects on recruitment or survival, if the proposed authorized M/SI for the specified activity is less than residual PBR, the M/SI, alone, would be considered to have a negligible impact on the species or stock. In cases where the Tier 2 analysis is necessary (*i.e.,* total M/SI including the amount estimated to occur incidental to the specific activity exceeds PBR), we again evaluate the estimated M/SI from the specified activity relative to the stock's PBR. If the M/SI from the specified activity is less than or equal to 10 percent of PBR and other major sources of human-caused mortality have mitigation in place, then the individual specified activity is considered to have a negligible impact on that stock. If the estimate exceeds 10 percent of PBR, then, absent other mitigating factors, the specified activity could be considered likely to have a non-negligible impact on that stock and additional analysis is necessary. As shown below, no Tier 2 analysis is necessary here for any of the stocks where take is proposed.

Overall, we reiterate that PBR is a conservative metric and not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. For example, in some cases stock abundance (which is one of three key inputs into the PBR calculation) is underestimated, which could result in an underestimate of PBR. Alternatively, we sometimes may not have complete M/SI data to compare to PBR, which could result in an overestimate of residual PBR. The accuracy and certainty around the data that feed any PBR calculation, such as the abundance estimates, must be carefully considered to evaluate whether the calculated PBR accurately reflects the circumstances of the particular stock. PBR is helpful in informing the analysis of the effects of mortality on a species or stock because it is important from a biological perspective to be able to consider how the total mortality in a given year may affect the population. However, section 101(a)(5)(A)(i)(I) of the MMPA indicates that NMFS shall authorize the requested incidental take from a specified activity if we find that the total of such taking (*i.e.,* from the specified activity) will have a negligible impact on such species or stock. In other words, the task under the statute is to evaluate the applicant's anticipated take in relation to their take's impact on the species or stock, not other entities' impacts on the species or stock. Neither the MMPA nor NMFS' implementing regulations call for consideration of other unrelated activities and their impacts on the species or stock.

We note that on June 17, 2020, NMFS finalized new Criteria for Determining Negligible Impact under MMPA section 101(a)(5)(E). The guidance explicitly notes the differences in the negligible impact determinations required under paragraph 101(a)(5)(E), as compared to paragraphs (a)(5)(A) and (D) of section 101, and specifies that the procedure in that document is limited to how the agency conducts negligible impact analyses for commercial fisheries under section 101(a)(5)(E). In this rule, NMFS has described its method for considering PBR to evaluate the effects of potential mortality in the negligible impact analysis. NMFS has reviewed the 2020 guidance and determined that our consideration of PBR in the evaluation of mortality as described above and in the rule remains appropriate for use in the negligible impact analysis for TPWD's activities under section 101(a)(5)(A). Our evaluation of the M/SI for each of the stocks follows.

We first consider maximum potential incidental M/SI from the gillnet analysis for the affected stocks of bottlenose dolphin (table 5) in consideration of NMFS' threshold for identifying insignificant M/SI take. By considering the maximum potential incidental M/SI in relation to PBR and ongoing sources of anthropogenic mortality, as described above, we begin our evaluation of whether the potential incremental addition of M/SI through gillnet interactions may affect the stocks' annual rates of recruitment or survival. We also consider the interaction of those mortalities with incidental taking of that stock by Level A harassment pursuant to the specified activity.

TABLE 7—SUMMARY INFORMATION OF ESTUARINE BOTTLENOSE DOLPHIN STOCKS RELATED TO TPWD GILLNET FISHERY SURVEYS

Stock	Proposed M/SI take (annual)	PBR	Estimated annual M/SI	Residual PBR (r-PBR) [1]	Proposed take/r-PBR (%)
Laguna Madre	0.4	2	0.6	1.4	28.6
Nueces Bay/Corpus Christi Bay	0.4	14	0.6	13.4	3.0
Copano Bay/Aransas Bay/San Antonio Bay/Redfish Bay/Espiritu Santo Bay	0.6	5	0.6	4.4	13.6

TABLE 7—SUMMARY INFORMATION OF ESTUARINE BOTTLENOSE DOLPHIN STOCKS RELATED TO TPWD GILLNET FISHERY SURVEYS—Continued

Stock	Proposed M/SI take (annual)	PBR	Estimated annual M/SI	Residual PBR (r-PBR) [1]	Proposed take/r-PBR (%)
Matagorda Bay/Tres Palacios Bay/Lavaca Bay	0.4	1.3	0	1.3	30.8
Galveston Bay/East Bay/Trinity Bay	0.2	6.3	[2] 1.2	5.1	3.9
West Bay	0.2	0.3	0	0.3	66.6
Sabine Lake	0.2	0.9	0	0.9	22.2

[1] Residual PBR (r-PBR) = PBR-annual M/SI. No other M/SI is authorized for Texas BSE dolphin stocks.
[2] The estimated annual M/SI for the Galveston Bay, East Bay, Trinity Bay stock includes two additional serious injuries that were assigned to the wrong stock incorrectly in Maze-Foley and Garrison (2024). The annual M/SI estimate includes those additional serious injuries here.

As described above, NMFS' M/SI analytical approach may include two tiers, as applicable. Specifically, we first address stocks for which total known human-caused M/SI is below PBR (*i.e.,* the M/SI from the specified activity is below residual PBR)), considering those with proposed M/SI both below and above the insignificance threshold. Then, if applicable, we discuss stocks for which total mortality exceeds PBR in a Tier 2 analysis in which we compare the proposed M/SI of the specified activity alone against PBR and consider other factors as necessary.

In this case, total M/SI, including the take proposed here for authorization, is below PBR, indicating that the incremental addition of the take by M/SI anticipated to occur as a result of TPWD's survey activities would not alone result in greater than a negligible impact. The proposed take does not exceed the insignificance threshold (10 percent r-PBR) for the Nueces Bay/Corpus Christi Bay and Galveston Bay/East Bay/Trinity Bay stocks, and we do not further discuss the estimated M/SI take for those stocks. As noted above, for a species or stock with authorized M/SI less than 10 percent of residual PBR, we consider M/SI from the specified activities to represent a clearly insignificant incremental increase in ongoing anthropogenic M/SI that alone (*i.e.,* in the absence of any other take and barring any other unusual circumstances) will clearly not adversely affect annual rates of recruitment and survival.

For the remaining stocks, the estimated take exceeds the insignificance threshold (while remaining below total r-PBR). As described above, if the total M/SI estimate is less than or equal to PBR, which is the case here, then the specified activity is considered to have a negligible impact on that stock. Although the M/SI from takes authorized here for the specified activity is above the insignificance threshold, as described above, that does not indicate that the M/SI associated with the specified activities is necessarily approaching a level that would exceed negligible impact. Rather, it is used as a cue to look more closely if and when the M/SI for the specified activity approaches residual PBR, as it becomes increasingly necessary (the closer the M/SI from the specified activity is to 100 percent residual PBR) to carefully consider whether there are other factors that could affect reproduction or survival. Here, the M/SI is not closely approaching residual PBR (ranging from 14–67 percent of r-PBR) and there are no other factors that would suggest that the authorized mortality (alone) would have more than a negligible impact on this stock. For three stocks (Matagorda Bay/Tres Palacios Bay/Lavaca Bay, West Bay, and Sabine Lake), there is no other known source of M/SI according to Maze-Foley and Garrison (2024) and the Marine Mammal Stranding Database. The Laguna Madre and Copano Bay/Aransas Bay/San Antonio Bay/Redfish Bay/Espiritu Santo Bay have all experienced some M/SI from other sources over the past 5 years. However, the driving factor behind the higher percentages of r-PBR is the small stock size which results in a low PBR, meaning that rare, isolated instances of M/SI can result in a low r-PBR. However, there is no sustained pattern of ongoing annual anthropogenic mortality for any of these stocks that would indicate cause for concern in relation to the take by M/SI that is estimated to occur as a result of TPWD's activities.

In addition, we must also still determine that any impacts on the species or stock from other types of take (*i.e.,* harassment) caused by the applicant do not combine with the impacts from mortality or serious injury addressed here to result in adverse effects on the species or stock through effects on annual rates of recruitment or survival. The rule also allows for a limited number of takes by non-auditory injury for each stock (no more than 1 to 2 takes per stock by Level A harassment over the 5-year duration). Given the limited number of potential instances, these non-auditory injuries are unlikely to be of a nature or level that would impact reproduction or survival.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers. Therefore, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers (see 86 FR 5322, January 19, 2021). Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The number of takes NMFS proposes to authorize is below one-third of the abundance for all of the bottlenose dolphins BSE stocks where take is proposed (table 8). The total annual number of takes proposed for authorization is no higher than one percent of the population for any of the affected Texas BSE stocks.

TABLE 8—AMOUNT OF PROPOSED TAKING OF TEXAS BOTTLENOSE DOLPHIN STOCKS RELATIVE TO STOCK ABUNDANCE

Stock	Stock abundance	Proposed M/SI and Level A take (annual)	Percent of population proposed for take
Copano Bay/Aransas Bay/San Antonio Bay/Redfish Bay/Espiritu Santo Bay	[1] 669	1	0.2
Laguna Madre	[1] 222	0.6	0.3
Nueces Bay/Corpus Christi Bay	[1] 1,744	0.6	<0.1
Matagorda Bay/Tres Palacios Bay/Lavaca Bay	[2] 150	0.6	0.4
West Bay	[3] 37	0.4	1.1
Galveston Bay/East Bay/Trinity Bay	[3] 842	0.4	<0.1
Sabine Lake	[3] 122	0.4	0.3

[1] Abundance values used for these stocks are the N_{min} calculated values from the Garrison (2025) report.
[2] The SEFSC conducted stock structure research (biopsy sampling surveys) from 2012–2014. During the biopsy sampling, photos were taken for photo-ID and 285 individual dolphins with distinct dorsal fins were identified within this stock boundaries (NMFS SEFSC, UNPUBLISHED DATA). Abundance value shown here is N_{best}.
[3] Abundance values for these stocks come from the SARs.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensures that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance with the issuance of LOAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866. This proposed rule is not an E.O. 14192 regulatory action because this rule is not significant under E.O. 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. TPWD is the sole entity that would be subject to the requirements in these proposed regulations, and TPWD is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151 and include the applications for regulations, subsequent LOAs, and reports. Submit comments regarding any aspect of this data collection, including suggestion for reducing the burden, to NMFS (see **ADDRESSES** section) and through the Regulatory Dashboard at: *https://www.reginfo.gov.* Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the TPWD's request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare the final rule and make final determinations on whether to issue the requested authorizations. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

List of Subjects in 50 CFR 217

Fish, Endangered and threatened species, Marine mammals, Mitigation and monitoring requirements, Reporting and recordkeeping requirements, Wildlife.

Dated: March 3, 2026.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 217 as follows:

PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for 50 CFR part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Add subpart J to read as follows

Subpart J—Taking Marine Mammals Incidental to Texas Parks and Wildlife Department Fisheries Research

Sec.

Subpart J—Taking Marine Mammals Incidental to Texas Parks and Wildlife Department Fisheries Research

§ 217.90 Specified activity and geographical region.

(a) Regulations in this subpart apply only to the Texas Parks and Wildlife Department (TPWD) and those persons acting under its authority during fishery research surveys for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to research survey program operations. Requirements imposed upon TPWD must be implemented by those persons the authorize or fund to conduct activities on their behalf.

(b) The taking of marine mammals by TPWD may be authorized in a letter of authorization (LOA) only if the taking occurs within the following Texas bays: Matagorda, Tres Palacios, Lavaca Bay (Includes Lavaca and Tres Palacios with the eastern limit is roughly Caney Creek); Copano Bay, San Antonio, Aransas, Redfish, Espiritu Santo (bounded by the Matagorda Island barrier and the Espiritu Santo Bay flats); Corpus Christi and Nueces Bay (Northern limit at Mesquite Bay; southern limit at the Upper Laguna Madre flats); upper Laguna Madre and lower Laguna Madre (From the John F. Kennedy Memorial Causeway (27.648 N, 97.276 W) south to the Rio Grande); West Bay (From the I–45 Causeway southwest to Drum Bay/San Luis Pass area); Galveston, East, Trinity Bay (Southwest boundary is the I–45 Galveston Causeway Bridge (29.288 N, 94.888 W) Includes Bolivar Roads); and Sabine Lake (From the Sabine Pass jetties east to the Louisiana border). See Figure 2.

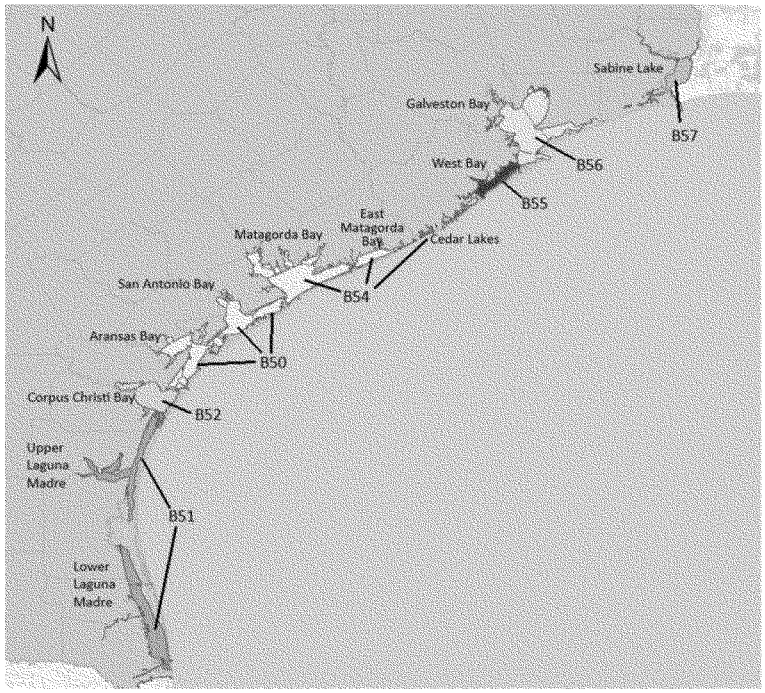

Figure 2. Texas Bays Sound and Estuary Stock Boundaries

§ 217.91 Effective Dates

Regulations under this subpart are effective from [EFFECTIVE DATE OF FINAL RULE], through [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

§ 217.92 Permissible methods of taking.

Under a LOA issued pursuant to §§ 216.106 of this chapter and 217.96, the holder of the LOA (hereinafter ''TPWD'') may incidentally, but not intentionally, take marine mammals within the areas described in § 217.90 by Level A harassment, serious injury, or mortality associated with fisheries research provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the relevant LOA.

§ 217.93 Prohibitions

(a) Except for the taking permitted in § 217.90 and authorized by the LOA issued under § 216.106 of this chapter and this subpart, it is unlawful for any person to do any of the following in connection with the specified activities:

(1) Violate or fail to comply with the terms, conditions, and requirements of this subpart or the LOA issued under this subpart;

(2) Take any marine mammal not specified in § 217.90;

(3) Take any marine mammal specified in the LOA in any manner other than as specified in the LOA;

(4) Take any marine mammal specified in § 217.90 after NMFS determines such taking results in more than a negligible impact on the species or stock of such marine mammal; or

(5) Take any marine mammal specified in § 217.90 after NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

(b) [Reserved]

§ 217.94 Mitigation requirements.

(a) When conducting the activities identified in § 217.90(a), the mitigation measures contained in this subpart and any LOA issued under §§ 216.106 and 217.96 of this chapter must be implemented by TPWD. These mitigation measures include:

(1) Only new or fully repaired gillnets may be used.

(2) TPWD must use gillnets with 2,101 hangings which connect the net to the float and lead line, with all hangings less than or equal to 4 in (10 cm) along the float and lead line.

(3) TPWD must set gillnets to ensure each gillnet is set as tight as possible from the surface to the seafloor and have

marker buoys attached with ropes to the junctures of each mesh size and the end of the net as short as possible.

(4) If any bottlenose dolphins are present deployment of gillnets shall not occur until all dolphins have left the area.

(5) If bottlenose dolphins enter the area while a gillnet is being set, the lead line shall be raised and lowered repeatedly to encourage the animals to leave the site. If bottlenose dolphins remain in the area, the gillnet must be hauled back onto the vessel, and an alternative site must be selected.

(6) Any live captured marine mammals must be released from the gillnet gear and returned to the water as soon as possible with no gear or as little gear remaining on the animal as possible. Animals must be released without removing them from the water.

(7) TPWD must not set gillnets in grids where dolphins have been taken on more than one occasion or where multiple adjacent grids have had at least one dolphin encounter.

(8) TPWD must implement a ''last out/first in'' set strategy at sites where bottlenose dolphins have been encountered within the last 5-years. A net set in this manner will be deployed last for the day and retrieved first on the next day.

(b) [Reserved]

§ 217.95 Requirements for monitoring and reporting.

(a) *Staff training.* TPWD staff must attend a safe handling, release, and identification workshop. TPWD shall ensure that at least one staff member on every gillnet sampling trip has had the training. TPWD shall hold staff meetings prior to the start of each gillnet season which will include: special instructions for handling bottlenose dolphins, scanning for the presence of dolphins prior to gillnet sets, scanning nets for entanglements, and what to do if there is an entanglement.

(b) *Visual monitoring.* TPWD staff must slow the vessel between 600 to 1000 feet (ft) (183 to 305 meters (m)) from the shoreline when approaching a sampling site. All staff members would scan the surface of the water for 15-minutes to watch and listen for surface activity prior to setting the nets. If a bottlenose dolphin is observed during the 15-minute observation period at the site, the net shall not be deployed. If bottlenose dolphins are observed, the net may only be deployed if the bottlenose dolphins are observed on a path away from the site consistently for 15-minutes or are not re-sighted within 15-minutes.

(c) *Reporting of injured or dead marine mammals.* (1) In the event that the activity defined in § 217.90(a) causes the take of a marine mammal in a prohibited manner, TPWD shall not set any more nets until such time as an appropriate decision regarding the activity continuation can be made by NMFS Office of Protected Resources (OPR). OPR will review the circumstances of the prohibited take and determine what measures are necessary to minimize the likelihood of further prohibited take. The report must include the information included in paragraph (c)(2) of this section, details of research survey, monitoring conducted prior to interaction, full descriptions of any observations of the animals, the context (vessel and conditions), decisions made, and rationale for decisions made in vessel and gear handling.

(2) TPWD shall report all injured or dead marine mammals observed during fishery research surveys that are not attributed to the specified activity to the Southeast Regional Stranding Coordinator within 24 hours. The following information shall be provided:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident including, but not limited to, monitoring prior to and occurring at time of incident;

(iii) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility);

(iv) Description of the animal(s) involved (*e.g.,* size, age class);

(v) Water depth and net location where entangled;

(vi) Nature of the entanglement (*i.e.,* part(s) of the animal(s) entangled, where in the net it was entangled);

(vii) Fate of the animal(s);

(viii) Detailed description of events, including how the animal(s) was disentangled and behavior upon release, including signs of injury (if alive); and

(ix) Photographs or video footage of the animal(s).

(d) *Annual reporting.* (1) TPWD shall submit an annual summary report to OPR not later than 90 days following the end of the fall sampling season. TPWD shall provide a final report within 30 days following resolution of comments on the draft report.

(2) These reports shall contain, at minimum, the following:

(i) Locations and time/date of all net sets;

(ii) All instances of marine mammal observations and descriptions of any mitigation procedures implemented or not implemented and why;

(iii) All incidents of marine mammal interactions, including all information required in paragraph (b) of this section;

(iv) A written evaluation of the effectiveness of TPWD mitigation strategies in reducing the number of marine mammal interactions with survey gear, including gear modifications and best professional judgment and suggestions for changes to the mitigation strategies, if any;

(v) A summary of all relevant marine mammal training and any coordination with OPR.

§ 217.96 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, TPWD must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, TPWD must apply for and obtain a modification of the LOA as described in § 217.97.

(d) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(e) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(f) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.97 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.96 for the activity identified in § 217.90(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA

under these regulations were implemented;

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 217.96 for the activity identified in § 217.90(a) may be modified by Office of Protected Resources (OPR) under the following circumstances:

(1) Adaptive management. OPR may modify or augment the existing mitigation, monitoring, or reporting measures (after consulting with SEFSC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(ii) [Reserved]

(2) Emergencies. If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 219.87, an LOA may be modified without prior notice or opportunity for public comment. A notice would be published in the **Federal Register** within 30 days of the action.

§ 217.98–217.99 [Reserved]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 260224–0055]

RIN 0648–BN84

Reef Fish Fishery of the Gulf of America; Shallow-Water Grouper Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action under the Fishery Management Plan for the Reef Fish Resources of the Gulf (FMP), as prepared by the Gulf Council (Council). If implemented, this proposed rule would modify the Gulf of America (Gulf) Other Shallow-Water Grouper (SWG) complex catch limits, and would set a recreational fixed-closed season for Gulf Other SWG. The purpose of this proposed rule is to reduce harvest of Gulf scamp and yellowmouth grouper while the Council develops Amendment 58A to the FMP, which considers additional Other SWG management measures.

DATES: Written comments must be received on or before April 17, 2026.

ADDRESSES: A plain language summary of this proposed rule is available at *https://www.regulations.gov/docket[NOAA-NMFS-2025-1065].* You may submit comments on this document, identified by [NOAA–NMFS–2025–1065], by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit *https://www.regulations.gov* and type [NOAA–NMFS–2025–1065], in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Dan Luers, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the framework action, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/modifications-other-shallow-water-grouper-complex-management-measures.*

FOR FURTHER INFORMATION CONTACT: Dan Luers, telephone: 727–824–5305, or email: *daniel.luers@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes the Other SWG complex (composed of scamp, yellowmouth grouper, black grouper, and yellowfin grouper), is managed under the FMP. The FMP was prepared by the Council and NMFS, approved by the Secretary of Commerce, and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

All catch limits in this proposed rule are in pounds (lb) gutted weight.

Background

The Magnuson-Stevens Act requires NMFS and the regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and to protect marine ecosystems.

Scamp, yellowmouth grouper, black grouper, and yellowfin grouper were assigned to the Other SWG complex in the Generic Annual Catch Limits (ACL) and Accountability Measures (AM) Amendment (Generic ACL/AM Amendment) (76 FR 82044, December 29, 2011). These species were grouped into this complex for management proposes based on their similar fishery characteristics, such as habitat and harvest methods. The Other SWG stock complex ACL is set equal to the complex acceptable biological catch (ABC) which is currently 710,000 lb