

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation (January 22, 2004, 69 FR 3064). Of particular interest to us are comments on the criteria used to identify critical habitat, the special management considerations, and additional suggestions regarding the primary constituent elements identified for the California tiger salamander in this proposed rule. Please feel free to suggest other sources of information relevant to this species of which you may be aware.

An analysis of the economic impacts of proposing critical habitat for the California tiger salamander is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at <http://ventura.fws.gov>, or by contacting the Ventura Fish and Wildlife Office directly (see **ADDRESSES** section).

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include "ttn: RIN 1018-AT44" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the Ventura Fish and Wildlife Office (see **ADDRESSES** section and **FOR FURTHER INFORMATION CONTACT**). In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public inspection in their entirety.

Background

On January 22, 2004, we published in the **Federal Register** a proposed critical habitat rule for the Santa Barbara DPS of California tiger salamander listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). Six critical habitat units, totaling approximately 13,920 acres (5,633 hectares), are proposed for designation for the Santa Barbara County DPS of California tiger salamander. The proposed critical habitat is located in Santa Barbara County, CA. For locations of these proposed units, please consult the proposed rule (69 FR 3064).

The comment period for the proposed critical habitat designation originally closed on March 22, 2004. We are now announcing one public hearing and are reopening the comment period to allow all interested parties to submit oral or written comments on the proposal. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. We received numerous requests for an extension of the comment period and for a public hearing. In response to these requests, we are reopening the public comment period and holding a public hearing on the date and at the address described in the **DATES** and **ADDRESSES** section.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll, Region 1, at 503/231-2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the hearing date.

Information regarding this proposal is available in alternative formats upon request.

Author

The primary author of this notice is Katie Drexhage (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 5, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 040407106-4106-01, I.D. 040104A]

RIN 0648-AS04

List of Fisheries for 2004

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

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is publishing the proposed List of Fisheries (LOF) for 2004, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2004 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: Comments must be received by May 13, 2004.

ADDRESSES: Send comments to Chief, Marine Mammal Conservation Division, Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via email to 2004LOF.comments@noaa.gov or to the Federal eRulemaking portal: <http://www.regulations.gov> (follow instructions for submitting comments).

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this proposed rule, should be submitted in writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and to David Rostker, OMB, by e-mail at David_Rostker@omb.eop.gov or by fax to 202-395-7285.

See **SUPPLEMENTARY INFORMATION** for information on how to obtain registration information, materials, and marine mammal reporting forms.

FOR FURTHER INFORMATION CONTACT:

Kristy Long, Office of Protected Resources, 301-713-1401; Kim Thounhurst, Northeast Region, 978-281-9328; Juan Levesque, Southeast Region, 727-570-5312; Cathy Campbell, Southwest Region, 562-980-4060; Brent Norberg, Northwest Region, 206-526-6733; Bridget Mansfield, Alaska Region, 907-586-7642. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Registration information, materials, and marine mammal reporting forms may be obtained from the following regional offices:

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

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Teletha Griffin;

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

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

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

What is the List of Fisheries?

Section 118 of the MMPA requires that NMFS place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery (16 U.S.C. 1387 (c)(1)). The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take

reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Stock Assessment Reports, other relevant sources, and the LOF, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(3)).

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

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

Fishery Classification Criteria

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

Tier 1: If the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

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

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

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

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional

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

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

Other Criteria That May Be Considered

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

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

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

Am I Required to Register Under the MMPA?

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

How Do I Register?

Fishers must register with the Marine Mammal Authorization Program (MMAP) by contacting the relevant NMFS Regional Office (see **ADDRESSES**) unless they participate in a fishery that has an integrated registration program (described below). Upon receipt of a

completed registration, NMFS will issue vessel or gear owners physical evidence of a current and valid registration that must be displayed or in the possession of the master of each vessel while fishing in accordance with section 118 of the MMPA (16 U.S.C. 1387(c)(3)(A)).

What is the Process for Registering in an Integrated Fishery?

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to submit registration or renewal materials or pay the \$25 registration fee. Following is a list of integrated fisheries and a summary of the integration process for each Region. Fishers who operate in an integrated fishery and have not received registration materials should contact their NMFS Regional Office listed in the first paragraph of **SUPPLEMENTARY INFORMATION**.

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA:

1. All Alaska Category II fisheries;
2. All Washington and Oregon Category II fisheries;
3. Northeast Regional fisheries for which a state or Federal permit is required. Individuals fishing in fisheries for which no state or Federal permit is required must register with NMFS by contacting the Northeast Regional Office (see **ADDRESSES**); and
4. All North Carolina, South Carolina, Georgia, and Florida Category I and II fisheries for which a state permit is required.

How Do I Renew My Registration Under the MMPA?

Regional Offices, except for the Northeast Region, annually send renewal packets to participants in Category I or II fisheries that have previously registered; however, it is the responsibility of the fisher to ensure that registration or renewal forms are completed and submitted to NMFS at least 30 days in advance of fishing. Individuals who have not received a renewal packet by January 1 or are registering for the first time should request a registration form from the appropriate Regional Office (see **ADDRESSES**).

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

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report all incidental injuries or mortalities of marine mammals that occur during commercial fishing operations to NMFS. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the absence of any wound or other evidence of an injury, and must be reported. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

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

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

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

Sources of Information Reviewed for the Proposed 2004 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the Stock Assessment Reports (SARs) for all observed fisheries to determine whether changes in fishery classification were warranted. NMFS SARs are based on the best scientific information available at the time of preparation for the information presented in the SARs, including the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the potential biological removal (PBR) levels of marine mammal stocks. NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that is not included in the SARs. NMFS also took into account the discretion of the Assistant Administrator for Fisheries in developing the 2004 proposed LOF.

The information contained in the SARs is reviewed by regional scientific review groups (SRGs) representing Alaska, the Pacific (including Hawaii),

and the U.S. Atlantic, Gulf of Mexico, and the Caribbean. The SRGs were created by the MMPA to review the science that goes into the stock assessment reports, and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

The proposed LOF for 2004 was based, among other things, on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), the final SARs for 2002 (68 FR 17920, April 14, 2003), and the draft SARs for 2003 (68 FR 51561, August 27, 2003).

Summary of Changes to the Proposed LOF for 2004

The following summarizes changes in fishery classification including fisheries listed on the LOF, the number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery, that are proposed for the 2004 LOF. The placement and definitions of U.S. commercial fisheries proposed for 2004 are identical to those provided in the LOF for 2003 with the following exceptions.

Commercial Fisheries in the Pacific Ocean: Fishery Classification

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

NMFS proposes to reclassify the Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line Fishery (Hawaii longline fishery) as Category I under the MMPA primarily because of the level of incidental mortality and serious injury that occurs between this fishery and the Hawaiian stock of false killer whales (*Pseudorca crassidens*). However, NMFS also has information regarding incidental mortality and serious injury that occurs between this fishery and the Hawaiian stock of Risso's dolphins (*Grampus griseus*), Hawaiian stock of bottlenose dolphins (*Tursiops truncatus*), Hawaiian stock of spinner dolphins (*Stenella longirostris*), Hawaiian stock of pantropical spotted dolphins (*Stenella attenuata*), Hawaiian stock of short-finned pilot whales (*Globicephala macrorhynchus*), Hawaiian stock of Blainville's beaked whales (*Mesoplodon densirostris*), Hawaiian stock of sperm whales (*Physeter macrocephalus*) and the Central North Pacific stock of humpback whales (*Megaptera novaeangliae*).

In 2002, NMFS surveyed cetacean abundance, including the Hawaiian

stock of false killer whales, in waters where the Hawaii longline fishery operated, a survey that would allow for a better estimate of abundance and a more reliable PBR level and better estimates of mortality and serious injury in marine mammal stocks taken by this fishery. This survey addressed the limitations of the earlier survey data, discussed in the 2001 and 2003 LOFs (66 FR 42780, August 15, 2001; 68 FR 41725, July 15, 2003) and the need for these data was emphasized in the 2001 LOF. The 2002 Pacific and Alaska SARs provided data about these stocks of marine mammals and calculated a rate of interaction between the Hawaii longline fishery and each stock based on observer data. As a result, false killer whales (Hawaiian stock) were determined to be a strategic stock in 2002. However, the surveys were not completed prior to the 2002 LOF and these data were not completely analyzed prior to the completion of the 2003 LOF. Further, the abundance estimate on which the PBR was based was considered an underestimate because it was based on 1993–98 aerial surveys conducted only within approximately 25 nautical miles of the main Hawaiian Islands, not throughout the entire range of the false killer whale stock. For these reasons, NMFS left in place the fishery's classification as a Category III fishery in 2002 and 2003 based on the limitations of available information, and the need to review other relevant sources in 2004.

Information Available for the 2004 LOF That was Not Available for the 2003 LOF

Abundance information: The results of the 2002 surveys in the Hawaiian EEZ are now available (Barlow, 2003. Cetacean Abundance in Hawaiian Waters during Summer/Fall of 2002, referenced as PSRG–7), and these have been combined with the earlier aerial surveys within 25 nmi of the main Hawaiian Islands (Mobley *et al.* 2000) to produce an estimate of the abundance of false killer whales in the Hawaiian EEZ. The methods used in the surveys followed standard survey techniques and are described in the scientific papers cited above. The method for combining the results of the two surveys followed standard statistical procedures. The 2002 survey of the entire Hawaiian Islands Exclusive Economic Zone (EEZ) resulted in an abundance estimate for false killer whales (Hawaiian stock) of 268 individuals (based on the lower 85–percent confidence interval), a slight increase from the previous estimate.

Mortality information: The results of an expanded observer program in the Hawaiian longline fishery are now

available (Forney 2003. Estimates of Cetacean Mortality and Injury in the Hawaii Based Longline Fishery, 1994–2002. 11/4/2003). These mortality and serious injury estimates were based upon a long-term data set, with expanded observer coverage between 2000 and 2002 primarily in tuna-style fishing. These data allowed an evaluation of the suggestion that tuna-style fishing resulted in little to no (remote likelihood) injury or mortality of marine mammals. Since 1998, only one false killer whale has been observed killed in the Hawaiian EEZ.

As a result of these data, updated abundance and mortality estimates have been included in the 2004 draft stock assessment report for the Hawaiian stock of false killer whales (False Killer Whale (*Pseudorca crassidens*): Hawaiian stock, dated 11/15/2003). This report describes abundance, mortality and status of false killer whales and partitions serious injury and mortality of the stock within and outside the US EEZ. All of the above reports have been subjected to scientific review within NMFS and are the best scientific information available related to abundance and mortality of false killer whales in the area.

New Management Regime and Effort Reduction for the Fishery: NMFS approved a regulatory amendment under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) submitted by the Western Pacific Fishery Management Council (Council), published a proposed rule on January 28, 2004, and issued a final rule on April 2, 2004 (69 FR 17329) to establish a number of conservation and management measures for the fisheries managed under the FMP in order to provide adequate protections for sea turtles. On February 23, 2004, NMFS concluded consultation and issued a biological opinion under section 7 of the Endangered Species Act on the pelagic fisheries of the western Pacific region as they would be managed under the measures implemented through this final rule. The biological opinion found that the fisheries are not likely to jeopardize the continued existence of any ESA-listed species under the jurisdiction of NMFS.

That final rule reopened the swordfish-directed component of the Hawaii-based longline fishery with annual fleet-wide limits on fishery interactions with leatherback and loggerhead sea turtles, and an annual fleet-wide limit on fishing effort. The final rule also requires that operators of general longline vessels annually complete a protected species workshop

and have on board a valid protected species workshop certificate.

To implement the regulatory amendment proposed by the Council, the final rule: (1) Establishes an annual effort limit on the amount of shallow-set longline fishing effort north of the equator that may be collectively exerted by Hawaii-based longline vessels (2,120 shallow-sets per year) and (2) divides and distributes this shallow-set annual effort limit each calendar year in equal portions to all holders of Hawaii longline-limited access permits. The interaction limits for leatherback and loggerhead sea turtles may also limit, albeit indirectly, interactions with other protected species, such as false killer whales, in the shallow-set component of the Hawaii-based longline fishery. Furthermore, under the ESA, when any of the incidental take limits is exceeded, NMFS reinitiates consultation under section 7 of the ESA, at which point the need for more restrictive measures would be considered. The terms and conditions of the incidental take statement in the 2004 biological opinion also mandate 100–percent observer coverage in the shallow-set component of the Hawaii-based longline fishery and at least 20–percent coverage in the deep-set component. NMFS intends to implement these levels of coverage. Given the relatively long history of the deep-set component and our understanding of patterns of fishing, catches, and interactions with protected species, NMFS has determined 20 percent to be a sufficient level of coverage in the deep-set component of the fishery.

Tier Evaluation

Tier 1 Evaluation: The Hawaii longline fishery is the only fishery known to interact with the Hawaiian stock of false killer whales. Based on the currently available data, total annual incidental mortality and serious injury across all fisheries (in this case, just the Hawaii longline fishery) is greater than or equal to 10 percent of the PBR level for the Hawaiian stock of false killer whales. Therefore, the Hawaii longline fishery is subject to Tier 2 analysis.

Tier 2 Evaluation: Based on extrapolations from the currently available data, total annual mortality and serious injury (4.4 animals) of the Hawaiian stock of false killer whales exceeds 50 percent of the PBR level (PBR=1.2). The continued take of false killer whales and other cetaceans, including endangered humpback and sperm whales, warrant recategorization of the fishery. Therefore, NMFS recommends elevating this fishery to Category I in the 2004 LOF.

Justification for Category I Classification

A mathematical application of the regulations based on the currently available data indicates that the total annual mortality and serious injury (4.4 animals) of the Hawaiian stock of false killer whales exceeds 50 percent of the PBR level (PBR=1.2). Therefore, NMFS is proposing to recategorize this fishery to a Category I under the MMPA. However, as explained below, NMFS is concerned that such a categorization may not adequately reflect the impact of this fishery on false killer whales. Accordingly, during the public comment period for this proposed rule, the NMFS Pacific Island Region will convene a workshop to evaluate the information used in this proposed categorization. The workshop will consist of NMFS scientists and managers as well as other individuals knowledgeable in marine mammal population assessments and interactions with fishing gear. The workshop will provide guidance on the reliability and adequacy of available information, including information on mortality and serious injury, used in the tier analysis and subsequent categorization decision. NMFS will consider the results of the workshop and public comments received on this proposed rule in its decision to classify this fishery in the final LOF for 2004.

In the case of the Hawaii longline fishery, the classification is affected most by incidental mortality and serious injury of false killer whales. The mortality estimate is considered reliable in recent years because it is based upon a relatively high level of observer coverage in the fishery. The single mortality of a false killer whale in 1998 within the EEZ is the basis for the expanded mortality estimate. The average mortality used in the LOF comparisons to abundance are based on a 5-year average. So if no further mortalities occur in 2004, this single event will no longer be considered in the 5-year average in 2005.

The abundance estimate of 268 animals is currently the best available for this stock and represents a much better estimate for this stock inside the Hawaiian EEZ than estimates in previous years. However, the extent to which the abundance estimate may be lower than the actual abundance of false killer whales is unknown. As a result, the extent to which the PBR of 1.2 may also be considered an underestimate is unknown for this stock of false killer whales. The uncertainty in the abundance and PBR estimates likely overemphasizes the ratio between

mortality and significant injury in this fishery to PBR; therefore, the impact of this fishery on false killer whales may be overemphasized.

As noted above, the interaction limits for sea turtles may also limit, albeit indirectly, interactions with other protected species, including false killer whales, that occur in the shallow-set component of the Hawaii-based longline fishery. The extent to which these measures reduce interactions with marine mammal stocks is not known at this time.

In summary, the abundance (and subsequently, the PBR) of false killer whales in the North Pacific Ocean is currently considered the best available estimate. However, it remains a minimum estimate because the surveys upon which the abundance estimate are based were limited in scope to a portion of the range, the Hawaiian EEZ, of the false killer whale stock. It does indicate that the stock abundance is low within the Hawaiian Island EEZ. Mortality records indicate that false killer whales occupy international waters and the EEZ around Palmyra, areas outside the 2002 survey area. Clearly, the number of false killer whales in the North Pacific Ocean subject to injury and mortality by the longline fishery exceeds the minimum population estimate included in Barlow, 2003 but it is not known by how much it is an underestimate. Such a conclusion can be based simply upon the presence of false killer whales in international waters and in the EEZ surrounding Palmyra that were hooked and killed or seriously injured incidental to the longline fishery.

The proposed reclassification of the Hawaii Longline Fishery to a Category I is warranted based on the current information. However, NMFS intends to address the scientific bases for this conclusion at a workshop which will be held during the public comment period. As previously provided, NMFS will consider the results of this workshop and public comments received on this proposed rule in its decision to classify this fishery in the final LOF for 2004.

Delineation of Alaska Fisheries

The List of Fisheries has included the Alaska groundfish fisheries as large combinations of fisheries since 1990. In the 2003 final LOF (68 FR 41725, July 15, 2003), NMFS indicated that it would review the existing fishery delineations in the LOF for Federal and state fisheries in Alaska. The decision to review Alaska fisheries was based, in part, on NMFS' recognition that the Bering Sea and Aleutian Islands (BSAI) groundfish trawl fishery is not a homogenous fishery, but rather, a

diverse group of fisheries that target different groundfish species over distinct geographic areas within the Bering Sea and during different seasons. Marine mammal interactions likely vary among BSAI groundfish trawl fisheries, based on gear type, time and area of operations, and target groundfish species.

NMFS also reviewed the Gulf of Alaska (GOA) Groundfish Trawl, Bering Sea and GOA Finfish Pot, AK Crustacean Pot, BSAI Groundfish Longline/Set Line (federally regulated waters, including miscellaneous finfish and sablefish), and GOA Groundfish Longline/Set Line (federally regulated waters, including miscellaneous finfish and sablefish) fisheries. Based on this review, NMFS proposes to delineate these fisheries by target species and gear type.

NMFS seeks to collect and analyze data in a manner that provides information that allows for the most effective management of living marine resources, including marine mammals. Marine mammal interactions vary among Alaska groundfish fisheries, based on time and area of operation, method of gear deployment, and target groundfish species. Therefore, this proposed delineation of fisheries operations is expected to allow for improved resolution of factors affecting incidental mortality and serious injury of marine mammals in these fisheries. The proposed newly delineated fisheries are currently listed within fisheries classified as Category III fisheries on the LOF. NMFS is completing an analysis of past incidental mortality and serious injury for each of the proposed newly delineated fisheries in accordance with the fishery classification criteria set forth in the implementing regulations of section 118 of the MMPA (50 CFR part 229). NMFS proposes these newly delineated fisheries be added to the LOF as Category III fisheries until completion of the analysis of serious injury and mortality for these new fisheries.

Delineation of AK Bering Sea and Aleutian Islands Groundfish Trawl Fishery

NMFS proposes separating the BSAI groundfish trawl fishery into four fisheries based on target species. These four fisheries are: *AK Bering Sea and Aleutian Islands Atka Mackerel Trawl Fishery*, *AK Bering Sea and Aleutian Islands Flatfish Trawl Fishery*, *AK Bering Sea and Aleutian Islands Pacific Cod Trawl Fishery*, and *AK Bering Sea and Aleutian Islands Pollock Trawl Fishery*. These fisheries operate in generally different geographic areas and

seasons, although some overlap may occur. Where overlap occurs, NMFS is able to differentiate in which fishery a vessel is operating when incidental mortality and serious injury of a marine mammal occurs through a combination of catch data, vessel monitoring systems (VMS) information, and observer data, even when a vessel participates in more than one fishery on a given trip. These fisheries likewise are managed separately by NMFS and the North Pacific Fishery Management Council.

Delineation of GOA Groundfish Trawl Fishery

NMFS proposes separating the GOA groundfish trawl fishery into four fisheries based on target species. These four fisheries are: *AK Gulf of Alaska Flatfish Trawl Fishery*, *AK Gulf of Alaska Pacific Cod Trawl Fishery*, *AK Gulf of Alaska Pollock Trawl Fishery*, and *AK Gulf of Alaska Rockfish Trawl Fishery*.

Delineation of Bering Sea and GOA Finfish Pot Fishery

NMFS proposes separating the Bering Sea and GOA finfish pot fishery into four fisheries based on target species. These four fisheries are: *AK Aleutian Islands Sablefish Pot Fishery*, *AK Bering Sea Sablefish Pot Fishery*, *AK Bering Sea and Aleutian Islands Pacific Cod Pot Fishery*, and *AK Gulf of Alaska Pacific Cod Pot Fishery*.

Delineation of Alaska Crustacean Pot Fishery

NMFS proposes separating the Alaska crustacean pot fishery into four fisheries based on target species. These four fisheries are: *AK Southeast Alaska Shrimp Pot Fishery*, *AK Southeast Alaska Crab Pot Fishery*, *AK Gulf of Alaska Crab Pot Fishery*, and *AK Bering Sea and Aleutian Islands Crab Pot Fishery*.

Delineation of BSAI Groundfish Longline/Set Line Fishery (Federally Regulated Waters, Including Miscellaneous Finfish and Sablefish)

NMFS proposes separating the BSAI groundfish longline/set line fishery into four fisheries based on target species. These four fisheries are: *AK Bering Sea and Aleutian Islands Greenland Turbot Longline Fishery*, *AK Bering Sea and Aleutian Islands Pacific Cod Longline Fishery*, *AK Bering Sea and Aleutian Islands Rockfish Longline*, and *AK Bering Sea and Aleutian Islands Sablefish Longline Fishery*.

Delineation of GOA Groundfish Longline/Set Line Fishery (Federally Regulated Waters, Including Miscellaneous Finfish and Sablefish)

NMFS proposes separating the GOA groundfish longline/set line fishery into four fisheries based on target species. These four fisheries are: *AK Gulf of Alaska Sablefish Longline Fishery*, *AK Gulf of Alaska Pacific Cod Longline Fishery*, *AK Gulf of Alaska Flatfish Longline Fishery*, and *AK Gulf of Alaska Rockfish Longline*.

Removal of Fisheries from the LOF

NMFS proposes removing the *AK Bering Sea and Gulf of Alaska Finfish Pot Fishery*, *AK Crustacean Pot Fishery*, *AK Bering Sea and Aleutian Islands Groundfish Longline/Set Line Fishery (federally regulated waters, including miscellaneous finfish and sablefish)*, *AK Gulf of Alaska Groundfish Longline/Set Line Fishery (federally regulated waters, including miscellaneous finfish and sablefish)*, *AK Bering Sea and Aleutian Islands Groundfish Trawl Fishery*, and *AK Gulf of Alaska Groundfish Trawl Fishery* from the LOF. After reviewing these fisheries, NMFS is proposing to differentiate each fishery by target species and gear type, which more accurately reflect existing fishery management regimes in Alaska. Therefore, removing these fisheries will not negatively affect NMFS' ability to analyze and assess serious injury and mortality of marine mammals captured incidental to these fisheries. A description of the proposed delineation of these fisheries can be found above in the Fishery Classification section for the Pacific Ocean.

Number of Vessels/Persons

The estimated number of participants in the "OR Swordfish Floating Longline Fishery" is updated to 1 based on 2003 permit data.

The estimated number of participants in the "WA Puget Sound Region Salmon Drift Gillnet Fishery" is updated to 210 based on 2003 permit data.

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

Gulf of Mexico Blue Crab Trap/Pot Fishery

In the 2003 LOF (68 FR 41725, July 15, 2003), NMFS provided that it would work with the Gulf States Marine Fisheries Commission (GSMFC) and the Sea Grant program to better monitor bottlenose dolphin takes in the "Gulf of Mexico Blue Crab Trap/Pot Fishery," to educate fishers about marine mammal interaction issues and ways to reduce

takes in the fishery, and to continue working on the derelict trap/pot removal program. The NMFS Southeast Regional Office has been working closely with the GSMFC and Sea Grant to develop outreach materials throughout the past year and anticipates distributing these materials in the near future. NMFS will continue to monitor strandings and communicate with fishers to determine the effectiveness of outreach efforts.

NMFS has been unable to conduct abundance surveys or analyze Gulf bottlenose dolphin stock structure due to budgetary constraints. Therefore, the bottlenose dolphin stock structure in the Gulf of Mexico is still not well defined at this time. Currently, the vast majority of NMFS' resources for bottlenose dolphin research is being expended in the Atlantic Ocean to satisfy needs of the Atlantic Bottlenose Dolphin Take Reduction Team. As the needs of this existing TRT are met, NMFS hopes to shift resources to the Gulf of Mexico to better define bottlenose dolphin stock structure in this area. NMFS will reevaluate classification of this fishery as relevant information becomes available. However, NMFS does not propose any change to the classification of this fishery because NMFS lacks adequate information at this time.

List of Fisheries

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

The tables also list the marine mammal species and stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience injury or mortality in a given fishery, but also includes species or stocks for which there are anecdotal or historical, but not necessarily current, records of interaction. Additionally, species identified by logbook entries may not be verified. Not all species or stocks identified are the reason for a fishery's placement in a given category. There are a few fisheries that are in Category II that have no recently documented

interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as

discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of “Category II fishery” in 50 CFR 229.2.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Table 1 - List of Fisheries Commercial Fisheries in the Pacific Ocean

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|--|--------------------------------|---|
| Category I | | |
| <u>GILLNET FISHERIES:</u> | | |
| CA angel shark/halibut and other species set gillnet (>3.5 in. mesh) | 58 | Harbor porpoise, Central CA Common dolphin, short-beaked, CA/OR/WA Common dolphin, long-beaked CA California sea lion, U.S. Harbor seal, CA Northern elephant seal, CA breeding Sea otter, CA |
| <u>LONGLINE/SET LINE FISHERIES:</u> | | |
| HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line | 140 | Humpback whale, Central North Pacific False killer whales, HI Risso's dolphin, HI Bottlenose dolphin, HI Spinner dolphin, HI Short-finned pilot whale, HI Sperm whale, HI |
| Category II | | |
| <u>GILLNET FISHERIES:</u> | | |
| AK Bristol Bay salmon drift gillnet | 1,903 | Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Spotted seal, AK Pacific white-sided dolphin, North Pacific |
| AK Bristol Bay salmon set gillnet | 1,014 | Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Northern fur seal, Eastern Pacific Spotted seal, AK |
| AK Cook Inlet salmon drift gillnet | 576 | Steller sea lion, Western U.S. Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet |
| AK Kodiak salmon set gillnet | 188 | Harbor seal, GOA Harbor porpoise, GOA Sea otter, AK |
| AK Metlakatla/Annette Island salmon drift gillnet | 60 | None documented |

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|--|--------------------------------|--|
| AK Peninsula/Aleutian Islands salmon drift gillnet | 164 | Northern fur seal, Eastern Pacific Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK |
| AK Peninsula/Aleutian Islands salmon set gillnet | 116 | Steller sea lion, Western U.S. Harbor porpoise, Bering Sea |
| AK Prince William Sound salmon drift gillnet | 541 | Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific Harbor seal, GOA Pacific white-sided dolphin, North Pacific Harbor porpoise, GOA Dall's porpoise, AK Sea Otter, AK |
| AK Southeast salmon drift gillnet | 481 | Steller sea lion, Eastern U.S. Harbor seal, Southeast AK Pacific white-sided dolphin, North Pacific Harbor porpoise, Southeast AK Dall's porpoise, AK Humpback whale, Central North Pacific |
| AK Yakutat salmon set gillnet | 170 | Harbor seal, Southeast AK Gray whale, Eastern North Pacific |
| CA/OR thresher shark/swordfish drift gillnet (≥ 14 in. mesh) | 113 | Steller sea lion, Eastern U.S. Sperm whale, CA/OR/WA Dall's porpoise, CA/OR/WA Fin whale, CA/OR/WA Gray whale, Eastern North Pacific Northern Pacific white-sided dolphin, CA/OR/WA Southern Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore Short-beaked common dolphin, CA/OR/WA Long-beaked common dolphin, CA/OR/WA Northern right-whale dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA Baird's beaked whale, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Cuvier's beaked whale, CA/OR/WA Pygmy sperm whale, CA/OR/WA California sea lion, U.S. Northern elephant seal, CA breeding Humpback whale, CA/OR/WA-Mexico Minke whale, CA/OR/WA Striped dolphin, CA/OR/WA Killer whale, CA/OR/WA Pacific coast Northern fur seal, San Miguel Island |
| CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery (mesh size > 3.5 inches and < 14 inches) | 24 | None documented |

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|--|--------------------------------|---|
| WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line—Treaty Indian fishing is excluded) | 210 | Harbor porpoise, inland WA Dall's porpoise, CA/OR/WA Harbor seal, WA inland |
| <u>PURSE SEINE FISHERIES:</u> | | |
| AK Southeast salmon purse seine | 416 | Humpback whale, Central North Pacific |
| CA anchovy, mackerel, tuna purse seine | 150 | Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA |
| CA squid purse seine | 65 | Short-finned pilot whale, CA/OR/WA |
| <u>TRAWL FISHERIES:</u> | | |
| AK miscellaneous finfish pair trawl | 2 | None documented |
| <u>LONGLINE/SET LINE FISHERIES:</u> | | |
| CA pelagic longline | 30 | California sea lion |
| OR swordfish floating longline | 1 | None documented |
| OR blue shark floating longline | 1 | None documented |
| Category III | | |
| <u>GILLNET FISHERIES:</u> | | |
| AK Cook Inlet salmon set gillnet | 745 | Steller sea lion, Western U.S. Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet |
| AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet | 1,922 | Harbor porpoise, Bering Sea |
| AK miscellaneous finfish set gillnet | 3 | Steller sea lion, Western U.S. |
| AK Prince William Sound salmon set gillnet | 30 | Steller sea lion, Western U.S. Harbor seal, GOA |
| AK roe herring and food/bait herring gillnet | 2,034 | None documented |
| CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less | 341 | None documented |
| Hawaii gillnet | 115 | Bottlenose dolphin, HI Spinner dolphin, HI |
| WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing) | 24 | Harbor seal, OR/WA coast |

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|---|--------------------------------|---|
| WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet | 913 | None documented |
| WA, OR lower Columbia River (includes tributaries) drift gillnet | 110 | California sea lion, U.S. Harbor seal, OR/WA coast |
| WA Willapa Bay drift gillnet | 82 | Harbor seal, OR/WA coast Northern elephant seal, CA breeding |
| <u>PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:</u> | | |
| AK Metlakatla salmon purse seine | 10 | None documented |
| AK miscellaneous finfish beach seine | 1 | None documented |
| AK miscellaneous finfish purse seine | 3 | None documented |
| AK octopus/squid purse seine | 2 | None documented |
| AK roe herring and food/bait herring beach seine | 8 | None documented |
| AK roe herring and food/bait herring purse seine | 624 | None documented |
| AK salmon beach seine | 34 | None documented |
| AK salmon purse seine (except Southeast Alaska, which is in Category II) | 953 | Harbor seal, GOA |
| CA herring purse seine | 100 | California sea lion, U.S. Harbor seal, CA |
| CA sardine purse seine | 120 | None documented |
| HI opelu/akule net | 16 | None documented |
| HI purse seine | 18 | None documented |
| HI throw net, cast net | 47 | None documented |
| WA (all species) beach seine or drag seine | 235 | None documented |
| WA, OR herring, smelt, squid purse seine or lampara | 130 | None documented |
| WA salmon purse seine | 440 | None documented |
| WA salmon reef net | 53 | None documented |
| <u>DIP NET FISHERIES:</u> | | |
| CA squid dip net | 115 | None documented |
| WA, OR smelt, herring dip net | 119 | None documented |
| <u>MARINE AQUACULTURE FISHERIES:</u> | | |

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|---|--------------------------------|---|
| CA salmon enhancement rearing pen | >1 | None documented |
| OR salmon ranch | 1 | None documented |
| WA, OR salmon net pens | 14 | California sea lion, U.S. Harbor seal, WA inland waters |
| <u>TROLL FISHERIES:</u> | | |
| AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries | 1,530 (330 AK) | None documented |
| AK salmon troll | 2,335 | Steller sea lion, Western U.S. Steller sea lion, Eastern U.S. |
| American Samoa tuna troll | <50 | None documented |
| CA/OR/WA salmon troll | 4,300 | None documented |
| Commonwealth of the Northern Mariana Islands tuna troll | 50 | None documented |
| Guam tuna troll | 50 | None documented |
| HI net unclassified | 106 | None documented |
| HI trolling, rod and reel | 1,795 | None documented |
| <u>LONGLINE/SET LINE FISHERIES:</u> | | |
| AK Bering Sea, Aleutian Islands Greenland turbot longline | 36 | Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient |
| AK Bering Sea, Aleutian Islands Pacific cod longline | 114 | None documented |
| AK Bering Sea, Aleutian Islands rockfish longline | 17 | None documented |
| AK Bering Sea, Aleutian Islands sablefish longline | 63 | None documented |
| AK Gulf of Alaska halibut longline | 1302 | None documented |
| AK Gulf of Alaska Pacific cod longline | 440 | None documented |
| AK Gulf of Alaska rockfish longline | 421 | None documented |
| AK Gulf of Alaska sablefish longline | 412 | None documented |
| AK halibut longline/set line (State and Federal waters) | 3,079 | Steller sea lion, Western U.S. |
| AK octopus/squid longline | 7 | None documented |
| AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish) | 731 | None documented |

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|--|--------------------------------|---|
| WA, OR, CA groundfish, bottomfish longline/set line | 367 | None documented |
| WA, OR North Pacific halibut longline/set line | 350 | None documented |
| <u>TRAWL FISHERIES:</u> | | |
| AK Bering Sea, Aleutian Islands Atka mackerel trawl | 8 | Steller sea lion, Western U.S. |
| AK Bering Sea, Aleutian Islands flatfish trawl | 26 | Steller sea lion, Western U.S. Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient |
| AK Bering Sea, Aleutian Islands Pacific cod trawl | 87 | None documented |
| AK Bering Sea, Aleutian Islands pollock trawl | 120 | Steller sea lion, Western U.S. Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Humpback whale, Central North Pacific Humpback whale, Western North Pacific |
| AK Bering Sea, Aleutian Islands rockfish trawl | 9 | None documented |
| AK Gulf of Alaska flatfish trawl | 52 | None documented |
| AK Gulf of Alaska Pacific cod trawl | 101 | None documented |
| AK Gulf of Alaska pollock trawl | 83 | None documented |
| AK Gulf of Alaska rockfish trawl | 45 | None documented |
| AK food/bait herring trawl | 3 | None documented |
| AK miscellaneous finfish otter or beam trawl | 6 | None documented |
| AK shrimp otter trawl and beam trawl (statewide and Cook Inlet) | 58 | None documented |
| AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl | 2 | None documented |
| WA, OR, CA groundfish trawl | 585 | Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific Pacific white-sided dolphin, Central North Pacific Dall's porpoise, CA/OR/WA California sea lion, U.S. Harbor seal, OR/WA coast |
| WA, OR, CA shrimp trawl | 300 | None documented |
| <u>POT, RING NET, AND TRAP FISHERIES:</u> | | |
| AK Aleutian Islands sablefish pot | 8 | None documented |

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|---|--------------------------------|--|
| AK Bering Sea sablefish pot | 6 | Humpback whale, Central North Pacific Humpback whale, Western North Pacific |
| AK Bering Sea, Aleutian Islands Pacific cod pot | 76 | None documented |
| AK Bering Sea, Aleutian Islands crab pot | 329 | None documented |
| AK Gulf of Alaska crab pot | unknown | None documented |
| AK Gulf of Alaska Pacific cod pot | 154 | None documented |
| AK Southeast Alaska crab pot | unknown | None documented |
| AK Southeast Alaska shrimp pot | unknown | None documented |
| AK octopus/squid pot | 72 | None documented |
| AK snail pot | 2 | None documented |
| CA lobster, prawn, shrimp, rock crab, fish pot | 608 | Sea otter, CA |
| OR, CA hagfish pot or trap | 25 | None documented |
| WA, OR, CA crab pot | 1,478 | None documented |
| WA, OR, CA sablefish pot | 176 | None documented |
| WA, OR shrimp pot & trap | 254 | None documented |
| HI crab trap | 22 | None documented |
| HI fish trap | 19 | None documented |
| HI lobster trap | 15 | Hawaiian monk seal |
| HI shrimp trap | 5 | None documented |
| <u>HANDLINE AND JIG FISHERIES:</u> | | |
| AK miscellaneous finfish handline and mechanical jig | 100 | None documented |
| AK North Pacific halibut handline and mechanical jig | 93 | None documented |
| AK octopus/squid handline | 2 | None documented |
| American Samoa bottomfish | <50 | None documented |
| Commonwealth of the Northern Mariana Islands bottomfish | <50 | None documented |
| Guam bottomfish | <50 | None documented |
| HI aku boat, pole and line | 54 | None documented |
| HI deep sea bottomfish | 434 | Hawaiian monk seal |

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|--|--------------------------------|---|
| HI inshore handline | 650 | Bottlenose dolphin, HI |
| HI tuna | 144 | Rough-toothed dolphin, HI Bottlenose dolphin, HI Hawaiian monk seal |
| WA groundfish, bottomfish jig | 679 | None documented |
| <u>HARPOON FISHERIES:</u> | | |
| CA swordfish harpoon | 228 | None documented |
| <u>POUND NET/WEIR FISHERIES:</u> | | |
| AK herring spawn on kelp pound net | 452 | None documented |
| AK Southeast herring roe/food/bait pound net | 3 | None documented |
| WA herring brush weir | 1 | None documented |
| <u>BAIT PENS:</u> | | |
| WA/OR/CA bait pens | 13 | None documented |
| <u>DREDGE FISHERIES:</u> | | |
| Coastwide scallop dredge | 108 (12 AK) | None documented |
| <u>DIVE, HAND/MECHANICAL COLLECTION FISHERIES:</u> | | |
| AK abalone | 1 | None documented |
| AK clam | 156 | None documented |
| WA herring spawn on kelp | 4 | None documented |
| AK dungeness crab | 3 | None documented |
| AK herring spawn on kelp | 363 | None documented |
| AK urchin and other fish/shellfish | 471 | None documented |
| CA abalone | 111 | None documented |
| CA sea urchin | 583 | None documented |
| HI coral diving | 2 | None documented |
| HI fish pond | 10 | None documented |
| HI handpick | 135 | None documented |
| HI lobster diving | 6 | None documented |
| HI squidding, spear | 267 | None documented |

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|---|--------------------------------|--|
| WA, CA kelp | 4 | None documented |
| WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection | 637 | None documented |
| WA shellfish aquaculture | 684 | None documented |
| <u>COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:</u> | | |
| AK, WA, OR, CA commercial passenger fishing vessel | >7,000 (1,107 AK) | None documented |
| HI "other" | 114 | None documented |
| <u>LIVE FINFISH/SHELLFISH FISHERIES:</u> | | |
| CA finfish and shellfish live trap/hook-and-line | 93 | None documented |

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

Table 2 - List of Fisheries Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|------------------------------|--------------------------------|---|
| Category I | | |
| <u>GILLNET FISHERIES:</u> | | |
| Mid-Atlantic coastal gillnet | >655 | Humpback whale, Gulf of Maine Minke whale, Canadian east coast Bottlenose dolphin, WNA offshore Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA Common dolphin, WNA |

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|---|--------------------------------|--|
| Northeast sink gillnet | 341 | North Atlantic right whale, WNA Humpback whale, WNA Minke whale, Canadian east coast Killer whale, WNA White-sided dolphin, WNA Bottlenose dolphin, WNA offshore Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, WNA Common dolphin, WNA Fin whale, WNA Spotted dolphin, WNA False killer whale, WNA Harp seal, WNA |
| <u>LONGLINE FISHERIES:</u> | | |
| Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline | <200 | Humpback whale, WNA Minke whale, Canadian east coast Risso's dolphin, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA Common dolphin, WNA Atlantic spotted dolphin, WNA Pantropical spotted dolphin, WNA Striped dolphin, WNA Bottlenose dolphin, WNA offshore Bottlenose dolphin, GMX Outer Continental Shelf Bottlenose dolphin, GMX Continental Shelf Edge and Slope Atlantic spotted dolphin, Northern GMX Pantropical spotted dolphin, Northern GMX Risso's dolphin, Northern GMX Harbor porpoise, GME/BF Pygmy sperm whale, WNA |
| <u>TRAP/POT FISHERIES:</u> | | |
| Northeast/Mid-Atlantic American lobster trap/pot | 13,000 | North Atlantic right whale, WNA Humpback whale, WNA Fin whale, WNA Minke whale, Canadian east coast Harbor seal, WNA |
| <u>TRAWL FISHERIES:</u> | | |
| Atlantic squid, mackerel, butterfish trawl | 620 | Common dolphin, WNA Risso's dolphin, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA |
| Category II | | |
| <u>GILLNET FISHERIES:</u> | | |

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|--|--------------------------------|---|
| Gulf of Mexico gillnet | 724 | Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, and Estuarine |
| North Carolina inshore gillnet | 94 | Bottlenose dolphin, WNA coastal |
| Northeast anchored float gillnet | 133 | Humpback whale, WNA White-sided dolphin, WNA Harbor seal, WNA |
| Northeast drift gillnet | unknown | None documented |
| Southeast Atlantic gillnet | 779 | Bottlenose dolphin, WNA coastal |
| Southeastern U.S. Atlantic shark gillnet | 6 | Bottlenose dolphin, WNA coastal North Atlantic right whale, WNA Atlantic spotted dolphin, WNA |
| <u>TRAWL FISHERIES:</u> | | |
| Atlantic herring midwater trawl (including pair trawl) | 17 | Harbor seal, WNA |
| <u>TRAP/POT FISHERIES:</u> | | |
| Atlantic blue crab trap/pot | >16,000 | Bottlenose dolphin, WNA coastal West Indian manatee, FL |
| Atlantic mixed species trap/pot | unknown | Fin whale, WNA Humpback whale, Gulf of Maine Minke whale, Canadian east coast Harbor porpoise, GM/BF |
| <u>PURSE SEINE FISHERIES:</u> | | |
| Gulf of Mexico menhaden purse seine | 50 | Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal |
| <u>HAUL/BEACH SEINE FISHERIES:</u> | | |
| Mid-Atlantic haul/beach seine | 25 | Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF |
| North Carolina long haul seine | 33 | Bottlenose dolphin, WNA coastal |
| <u>STOP NET FISHERIES:</u> | | |
| North Carolina roe mullet stop net | 13 | Bottlenose dolphin, WNA coastal |
| <u>POUND NET FISHERIES:</u> | | |
| Virginia pound net | 187 | Bottlenose dolphin, WNA coastal |
| Category III | | |
| <u>GILLNET FISHERIES:</u> | | |

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|--|--------------------------------|--|
| Caribbean gillnet | >991 | Dwarf sperm whale, WNA West Indian manatee, Antillean |
| Chesapeake Bay inshore gillnet | 45 | Harbor porpoise, GME/BF |
| Delaware Bay inshore gillnet | 60 | Humpback whale, WNA Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF |
| Long Island Sound inshore gillnet | 20 | Humpback whale, WNA Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF |
| Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet | 32 | Humpback whale, WNA Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF |
| <u>TRAWL FISHERIES:</u> | | |
| Calico scallops trawl | 12 | None documented |
| Crab trawl | 400 | None documented |
| Georgia, South Carolina, Maryland whelk trawl | 25 | None documented |
| Gulf of Maine, Mid-Atlantic sea scallop trawl | 215 | None documented |
| Gulf of Maine northern shrimp trawl | 320 | None documented |
| Gulf of Mexico butterfish trawl | 2 | Atlantic spotted dolphin, Eastern GMX Pantropical spotted dolphin, Eastern GMX |
| Gulf of Mexico mixed species trawl | 20 | None documented |
| Mid-Atlantic mixed species trawl | >1,000 | None documented |
| North Atlantic bottom trawl | 1,052 | Long-finned pilot whale, WNA Short-finned pilot whale, WNA Common dolphin, WNA White-sided dolphin, WNA Striped dolphin, WNA Bottlenose dolphin, WNA offshore |
| Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl | >18,000 | Bottlenose dolphin, WNA coastal |
| U.S. Atlantic monkfish trawl | unknown | Common dolphin, WNA |
| <u>MARINE AQUACULTURE FISHERIES:</u> | | |
| Finfish aquaculture | 48 | Harbor seal, WNA |
| Shellfish aquaculture | unknown | None documented |
| <u>PURSE SEINE FISHERIES:</u> | | |

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|---|--------------------------------|--|
| Gulf of Maine Atlantic herring purse seine | 30 | Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, WNA |
| Gulf of Maine menhaden purse seine | 50 | None documented |
| Florida west coast sardine purse seine | 10 | Bottlenose dolphin, Eastern GMX coastal |
| Mid-Atlantic menhaden purse seine | 22 | Bottlenose dolphin, WNA coastal Humpback whale, WNA |
| U.S. Atlantic tuna purse seine | 5 | None documented |
| U.S. Mid-Atlantic hand seine | >250 | None documented |
| <u>LONGLINE/HOOK-AND-LINE FISHERIES:</u> | | |
| Gulf of Maine tub trawl groundfish bottom longline/ hook-and-line | 46 | Harbor seal, WNA Gray seal, Northwest North Atlantic Humpback whale, WNA |
| Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon | 26,223 | Humpback whale, WNA |
| Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line | >5,000 | None documented |
| Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line | <125 | None documented |
| Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon | 1,446 | None documented |
| <u>TRAP/POT FISHERIES</u> | | |
| Caribbean mixed species trap/pot | >501 | None documented |
| Caribbean spiny lobster trap/pot | >197 | None documented |
| Florida spiny lobster trap/pot | 2,145 | Bottlenose dolphin, Eastern GMX coastal |
| Gulf of Mexico blue crab trap/pot | 4,113 | Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL |
| Gulf of Mexico mixed species trap/pot | unknown | None documented |
| Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot | 10 | None documented |
| Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot | 4,453 | None documented |

| Fishery Description | Estimated # of vessels/persons | Marine mammal species and stocks incidentally killed/injured |
|---|--------------------------------|--|
| U.S. Mid-Atlantic eel trap/pot | >700 | None documented |
| <u>STOP SEINE/WEIR/POUND NET FISHERIES:</u> | | |
| Gulf of Maine herring and Atlantic mackerel stop seine/weir | 50 | North Atlantic right whale, WNA Humpback whale, WNA Minke whale, Canadian east coast Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, Northwest North Atlantic |
| U.S. Mid-Atlantic crab stop seine/weir | 2,600 | None documented |
| U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the North Carolina roe mullet stop net) | 751 | None documented |
| <u>DREDGE FISHERIES:</u> | | |
| Gulf of Maine mussel | >50 | None documented |
| Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge | 233 | None documented |
| U.S. Mid-Atlantic/Gulf of Mexico oyster | 7,000 | None documented |
| U.S. Mid-Atlantic offshore surf clam and quahog dredge | 100 | None documented |
| <u>HAUL/BEACH SEINE FISHERIES:</u> | | |
| Caribbean haul/beach seine | 15 | West Indian manatee, Antillean |
| Gulf of Mexico haul/beach seine | unknown | None documented |
| Southeastern U.S. Atlantic, haul/beach seine | 25 | None documented |
| <u>DIVE, HAND/MECHANICAL COLLECTION FISHERIES:</u> | | |
| Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection | 20,000 | None documented |
| Gulf of Maine urchin dive, hand/mechanical collection | >50 | None documented |
| Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net | unknown | None documented |
| <u>COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:</u> | | |
| Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel | 4,000 | None documented |

List of Abbreviations Used in Table 2: FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; NC - North Carolina; SC - South Carolina; TX - Texas; WNA - Western North Atlantic

Classification

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

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA, obtain an Authorization Certificate, and pay a fee of \$25. Additionally, fishers may be subject to a take reduction plan and requested to carry an observer. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. NMFS has estimated that approximately 41,600 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register. However, registration has been integrated with existing state or Federal registration programs for the majority of these fisheries so that the majority of fishers do not need to register separately under the MMPA. Currently, approximately 5,800 fishers register directly with NMFS under the MMPA authorization program.

This rule proposes to elevate the Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line Fishery to Category I in the LOF. Therefore participants in this fishery (140 participants) would be required to register under the MMPA.

Though this proposed rule would affect a number of small entities, the \$25 registration fee, with respect to anticipated revenues, is not considered a significant economic impact. If a vessel is requested to carry an observer, fishers will not incur any economic costs associated with carrying that observer. As a result of this certification, an initial regulatory flexibility analysis was not prepared. In the event that reclassification of a fishery to Category I or II results in a take reduction plan, economic analyses of the effects of that plan will be summarized in subsequent

rulemaking actions. Further, if a vessel is requested to carry an observer, fishers will not incur any economic costs associated with carrying that observer.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648-0293 (0.25 hours per report for new registrants and 0.15 hours per report for renewals). The requirement for reporting marine mammal injuries or mortalities has been approved by OMB under OMB control number 0648-0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES**).

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

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

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA (1995 EA). The 1995 EA concluded that implementation of those regulations would not have a significant impact on the human environment. This proposed rule would not make any

significant change in the management of reclassified fisheries, and therefore, this proposed rule is not expected to change the analysis or conclusion of the 1995 EA. If NMFS takes a management action, for example, through the development of a Take Reduction Plan (TRP), NMFS will first prepare an environmental document as required under NEPA specific to that action.

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

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

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

Dated: April 8, 2004.

William T. Hogarth,

*Assistant Administrator for Fisheries,
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