required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border. Although Canadian concurrence has been requested, notification has not yet been received. If a construction permit for Channel 267A at Pigeon, Michigan, is granted prior to receipt of formal concurrence by the Canadian government, the authorization will include the following condition: ''Operation with the facilities specified herein for Pigeon, Michigan, is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement, or if specifically objected to by Industry Canada.'' *See* **SUPPLEMENTARY INFORMATION** infra.

DATES: Effective January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket Nos. 01–229 and 01–231, adopted December 14, 2005, and released December 16, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

The Audio Division further, at the request of Edward Czelada, allots Channel 256A at Lexington, Michigan, as the community's second local FM service. Channel 256A can be allotted to Lexington, Michigan, in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 km (7.4 miles) north of Lexington. The coordinates for Channel 256A at Lexington, Michigan, are 43–22–30 North Latitude and 82–32–04 West Longitude. The Government of Canada has concurred in the allotment.

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 256A at Lexington and by adding Pigeon, Channel 267A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–41 Filed 1–3–06; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–3215; MB Docket No. 05–244; RM–11257]

Radio Broadcasting Services; Fruit Cove and St. Augustine, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 70 FR 48361 (August 17, 2005), this document reallots Channel 231C3 from St. Augustine, Florida to Fruit Cove, Florida, and modifies the license of Station WSOS-FM, accordingly. The coordinates for Channel 231C3 at Fruit Cove are 30–01–27 North Latitude and 81–36–19 West Longitude, with a site restriction of 10.2 kilometers (6.4 miles) south of the community.

DATES: Effective January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 05–244, adopted December 14, 2005, and released December 16, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, D.C. 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing St. Augustine, Channel 231C3 and by adding Fruit Cove, Channel 231C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–40 Filed 1–3–06; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 041108310–5347–04, I.D. 100104H]

RIN 0648–AS78

List of Fisheries for 2005

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is publishing its final List of Fisheries (LOF) for 2005, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2005 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 (TRP) requirements.

DATES: This final rule is effective February 3, 2006.

ADDRESSES: Registration information, materials, and marine mammal reporting forms may be obtained from several regional offices. See **SUPPLEMENTARY INFORMATION** for a listing of offices where these materials are available.

For collection-of-information requirements subject to the Paperwork Reduction Act, please contact Office of Management and Budget, Attn: David Rostker, fax: 202–395–7285 or *David_Rostker@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or general questions on the LOF, please contact the following NMFS staff:

Kristy Long, Office of Protected Resources, 301–713–2322;

David Gouveia, Northeast Region, 978–281–9300;

Vicki Cornish, Southeast Region, 727–824–5312;

Cathy Campbell, Southwest Region, 562–980–4060;

Brent Norberg, Northwest Region, 206–526–6733;

Chris Yates, Pacific Islands Region, 808–973–2937;

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:

Availability of Published Materials

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

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

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

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

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

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814, Attn: Lisa Van Atta.

What is the List of Fisheries?

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

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

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 of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classifications.

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

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

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

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

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

Other Criteria That May Be Considered

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

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

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

Am I Required to Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization from NMFS in

order to lawfully incidentally take a marine mammal in a commercial fishery. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How Do I Register?

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 (see **ADDRESSES**).

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA:

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

How Do I Renew My Registration Under the MMPA?

Regional Offices, except for the Northeast and Southeast Regions, annually send renewal packets to previously registered participants in Category I or II fisheries. 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 to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. 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 TRP Regulations?

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

Sources of Information Reviewed for the Proposed 2005 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, including information on the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels of marine mammal stocks. NMFS also reviewed other sources of new, relevant information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that is not included in the SARs.

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 is applied to the SARs, and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

The LOF for 2005 was based, among other things, on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), the final SARs for 2002 (68 FR 17920, April 14, 2003), the final SARs for 2003 (69 FR 54262, September 8, 2004), the final SARs for 2004 (70 FR 35397, June 20, 2005), and the draft SARs for 2005 (70 FR 37091, June 28, 2005).

Comments and Responses

NMFS received 14 comment letters on the proposed 2005 LOF (69 FR 70094, December 2, 2004) and draft environmental assessment (EA) on the LOF classification process (70 FR 49902, August 25, 2005) from environmental, commercial fishing, and federal and state interests. However many comments focused on issues outside the scope of the LOF and are not responded to in this final rule. Any comments received outside the public comment periods (December 2, 2004 through March 4, 2005 and August 25, 2005 through October 24, 2005) are not responded to in this final rule.

General Comments

Comment 1: One commenter felt that NMFS does not allow the public enough time to comment on the LOF.

Response: NMFS believes that the public comment period on the 2005 LOF was more than adequate. The comment period was originally open for 30 days from December 2, 2004 to January 3, 2005, extended for an additional 60 days until March 4, 2005, and then reopened for 60 days from August 25 to October 24, 2005. Therefore, the public comment period on this action was a total of 150 days.

Comment 2: One commenter feels that the LOF category definitions are arbitrary and capricious.

Response: When Congress amended the MMPA in 1994, section 118 specified that commercial fisheries were to be classified in one of three categories, i.e., those with frequent, occasional, or, a remote likelihood of or no known incidental mortality and serious injury of marine mammals. The Secretary of Commerce, through NMFS, proposed and finalized regulations to implement the 1994 amendments (60 FR 31666, June 16, 1995; 60 FR 45086, August 30, 1995). During the development of the draft regulations to implement MMPA section 118 (before NMFS developed the proposed rule), NMFS held several working sessions and solicited written comments on aspects of section 118, such as fishery classification criteria and options for classifying fisheries. NMFS also drafted and finalized an EA to analyze the effects of the proposed regulations on the environment and the public (NMFS, 1995). In developing the process for classifying fisheries, NMFS solicited and considered public input as well as analyzed the effects of these actions on the public. Therefore, NMFS does not agree that the classification system is arbitrary or capricious.

Comment 3: One commenter believes the MMAP registration fee is too low.

Response: In MMPA section 118(c)(5)(C), it states that the Secretary is authorized to charge a fee for granting an authorization to incidentally injure or kill marine mammals, however, that fee is not to exceed the administrative costs incurred in granting the authorization. Currently, NMFS charges $25 to cover administrative costs. If NMFS has integrated the MMPA authorization with other permits or authorization processes, the fee is waived.

Comment 4: Generally, NMFS retains information on all species/stocks incidentally injured or killed on the LOF for 5 years, similar to the stock assessment process. One commenter requested that NMFS retain information on all species/stocks incidentally injured or killed on the LOF, even if the interaction occurred more than 5 years ago.

Response: The LOF is intended to inform the public of the current status of commercial fisheries with respect to marine mammal serious injuries and mortalities. It was never intended that the LOF serve as a comprehensive document detailing a particular fishery's history in terms of marine mammal interactions. When NMFS makes changes to fishery classifications, number of vessels, or species/stocks incidentally injured or killed, there is detailed information in the SARs. Therefore NMFS does not believe that this information also needs to be duplicated in the LOF.

Comment 5: One commenter recommended that NMFS reclassify all trawl fisheries as Category I fisheries.

Response: NMFS classifies fisheries according to the level of marine mammal serious injury and mortality incidental to commercial fisheries and by using a two-tiered, stock-specific approach. Please see **SUPPLEMENTARY INFORMATION** for the classification criteria. Only trawl fisheries that met the criteria for a Category I fishery would be included in that category.

Comment 6: One commenter recommended that NMFS include the level of observer coverage in each fishery that is proposed for reclassification in the LOF. Further, the commenter requested that NMFS include the coefficients of variation for each estimate of serious injury and mortality to illustrate how thresholds between categories are exceeded, and therefore, illustrate the basis for reclassifications.

Response: NMFS will consider this comment throughout the 2006 LOF development process.

Comment 7: NMFS received several comments on information contained in individual SARs, specifically regarding the calculated PBR levels for marine mammal stocks, which are used in developing the LOF. Some commenters identified concerns with either the 2003 SARs or the 2005 draft SARs, which were available for public comment at the same time as the 2005 proposed LOF through a separate **Federal Register** document (70 FR 37091, June 28, 2005).

Response: NMFS will address all comments regarding the development of draft SARs for 2005 as part of the comments received during the comment period on the Notice of Availability of the final SARs (closed September 26, 2005).

Comments on Fisheries in the Pacific Ocean

Comment 8: Several commenters supported the proposed reclassification of the California/Oregon drift gillnet fishery.

Response: NMFS has reclassified the California/Oregon drift gillnet fishery from Category II to Category I in this final rule.

Comment 9: Several commenters supported the proposed reclassifications of the following fisheries: AK Bering Sea/Aleutian Islands (BSAI) flatfish trawl, AK BSAI pollock trawl, AK BSAI Greenland Turbot Longline, AK BSAI Pacific cod longline, and AK Bering Sea sablefish pot.

Response: NMFS has reclassified all five fisheries from Category III to Category II in this final rule.

Comment 10: One commenter suggested that NMFS base estimated serious injury and mortality levels on an average of the full time-series of observations, instead of on the most recent 5 years of observations.

Response: There are benefits and drawbacks to using the full time-series of data in lieu of the most recent 5 years of data on marine mammal mortality and serious injury. Using a longer time series may increase the sample size (number of serious injury/mortality events) and thus improve the precision of the estimated bycatch level. However, fisheries change over time, so it may not be appropriate to average a recent estimated bycatch level with a bycatch level from 10 or more years ago. Further, the use of a 5–year running average implies that, if a level of take occurs in year 1 that results in reclassification of a commercial fishery, and that is the only take that occurs, after 6 years, that take will ''drop off'' the record and the fishery would be a candidate for reclassification to a lower category. In recent years, fisheries have changed classification from Category II to III when new information indicated that takes were no longer occurring. Routinely using a longer time-series of data could delay a reclassification.

In the specific case of federally-managed Alaska groundfish fisheries, NMFS has determined that the most current 5 years of data should be used to classify commercial fisheries for two reasons. First, changes in commercial fishing operations due to recent management actions resulted in the fisheries being prosecuted under very different conditions than those in the 1990s. Second, in 2004, NMFS changed the identification of Alaska commercial fisheries from gear type and area, to gear type, area, and target species. Because of how data were collected on commercial fisheries, records prior to 1998 cannot be separated in this way.

Comment 11: One commenter felt that NMFS used marine mammal bycatch data in the LOF analysis that were not characteristic of the current fisheries.

Response: NMFS agrees that marine mammal interaction data used to classify commercial fisheries should be as current as is practicable to ensure that the estimated levels of serious injury and mortality reflect current fishing practices and environmental conditions. In some cases, and particularly for some Alaska State fisheries, information on marine mammal mortality and serious injury is quite dated. Currently there are eleven

Category II state-managed fisheries in Alaska on the LOF. Since 1990, six Category II fisheries have been observed. Of those, two have been reclassified from Category II to Category III because the observer program documented a very low level of marine mammal serious injuries and mortalities that occurred incidental to those fisheries. Seven state-managed Category II fisheries have never been observed. To date, only one fishery has been observed at a time, each for a 2–year period, and often with one or more years during which observer programs were not able to be implemented. Ideally, NMFS would observe each of these fisheries every 5 years to ensure data quality and timeliness. However, without new information on previously observed fisheries, NMFS must rely on the best available information, which in some cases is dated.

Comment 12: One commenter believes it is not appropriate for NMFS to use data from observed vessels to estimate the level of marine mammal serious injury and mortality on unobserved vessels during unobserved periods.

Response: Data collected by observers are extrapolated to the fleet, unless specific information is available that provides a reliable basis for changing this strategy. The BSAI and GOA fisheries were segregated in the 2004 LOF on the basis of a separation of time, area, and target species based on some assumptions that incidental serious injury and mortality of marine mammals in these fisheries (as segregated) may vary. As a result, NMFS believes that if bycatch levels differ between these fisheries, underlying causes for those takes may be easier to discern within a fishery. This segregation also eliminates from further investigation those fisheries in which bycatch levels are of little or no concern.

Therefore, NMFS disagrees that it is inappropriate to use observer data from an observed vessel to estimate the level of marine mammal serious injury and mortality on a vessel that does not carry an observer but is fishing with the same gear, targeting the same species, and fishing in the same general environment. Observer programs are the best source of information on the level of serious injury and mortality that occurs incidental to a commercial fishery, despite the fact that an assumption must be made that the level of serious injury and mortality across the whole fleet will be similar to the level of serious injury and mortality on observed vessels within that fleet.

One advantage of delineating the Alaska groundfish fisheries into different fisheries based on gear type, area, and target species is that NMFS is even more confident that levels of marine mammal bycatch on an observed vessel can be extrapolated to the unobserved portion of the fleet. In addition, the North Pacific Fishery Management Council's Scientific and Statistical Committee (SSC) commented that they are comfortable with extrapolating bycatch estimates from observed to unobserved portions of the fishery, as stated in the minutes of the SSC meeting on February 7–9, 2005: ''The SSC is comfortable with the approach to extrapolate estimates of takes from the observed portion of a fishery to the unobserved portion of the same fishery...''. Concerns raised by the SSC at the end of that sentence are addressed in the response to Comment 19.

Comment 13: When marine mammal takes occur in an area where very similar marine mammal stocks overlap in both space and time, NMFS does not assign serious injury/mortality events to a particular marine mammal stock. Instead, the LOF classification determination with respect to each marine mammal stock allows for the possibility that the mortality-serious injury event involved animals from that sub-unit. Some commenters believe NMFS is ''double-counting'' a single mortality-serious injury event. Commenters suggested an alternative approach such as weighting serious injury and mortality events by the probability that they involved marine mammals from a particular stock.

Response: The issue of so-called ''double counting'' of mortalities and incorrectly assigning a marine mammal mortality/serious injury event to a particular stock was raised by public commenters with respect to two situations: mortalities of killer whales in an area where transient and resident killer whale stocks overlap, and mortalities/serious injuries of humpback whales in Hawaii, where multiple stocks overlap on the humpback whale breeding grounds. The following rationale applies to both situations.

Assigning a commercial fishery incidental take event to a particular stock can be difficult when two marine mammal stocks that cannot be readily differentiated by observers overlap in space and time. There are three ways to assign an event to a stock when there is stock overlap: genetics, pro-rating (or ''weighting'') the take rate based on the abundance and distribution of each stock in that area, and independently assessing the impact of the take as if it could have resulted from either stock.

Assignment of a serious injury/mortality event to a particular stock in an area of overlap is most directly accomplished through genetics analysis of the dead marine mammal. Many genetics samples have been collected from marine mammals that have died incidental to Alaska commercial fisheries; analyses of these data can greatly assist in determining what stock(s) of marine mammals are impacted by fisheries. For some marine mammal stocks in U.S. waters, a serious injury/mortality event can be pro-rated to two different stocks if the distribution and abundance of both stocks in a particular area is well understood. However, if neither the abundance nor the distribution of both stocks in the area where the take occurred is known, pro-rating is not possible.

If NMFS cannot use pro-rating or genetics techniques to assign a particular serious injury/mortality event to a specific stock in an area of known stock overlap, then the agency assesses what LOF category would result if the take came from either stock. The impact of the single take to each possible source stock is independently reviewed for each stock by conducting separate Tier 2 analyses that compare that take to the PBR level of stock A or the PBR level of stock B. In all cases in which this situation occurred in the proposed 2005 LOF, the resulting LOF fishery categories were the same when the take was compared to either stock's PBR level. However, this may not always be the case. If the results of the Tier 2 analyses had resulted in possible classification of a fishery in one of two categories, NMFS would generally take a precautionary approach and place the fishery in the higher level category. There are no situations in which a take that might be assigned to Stock A is added to a take that might be assigned to Stock B.

Comment 14: To arrive at an assessment of incidental marine mammal mortality and serious injury, instead of double-counting takes, one commenter suggested NMFS do one of two things: (1) either reduce the mortality and serious injury by 50 percent, or (2) combine the population estimates of the affected stocks so that the actual take levels are compared to the actual total population. One commenter provided an alternative assessment of incidental marine mammal serious injury and mortality rates for combined populations of resident and transient killer whale stocks, and combined western and central humpback whale stocks.

Response: See the response to Comment 13 regarding the issue of so-

called ''double counting''. Stocks that are known to be genetically, demographically, and behaviorally distinct, such as resident and transient killer whale stocks, and western and central stocks of humpback whales, should not be combined for assessment of incidental mortality and serious injury. This approach is counter to the provisions of the MMPA and would greatly increase the probability that incidental mortality could have a negative impact on a stock without detection. If the source stock of an incidentally killed marine mammal is truly unknown, NMFS will continue the practice of assessing the possible impacts of that mortality on all reasonable marine mammal stocks that are known to occur in that area. NMFS will strive to reduce the number of situations where this is necessary by continuing to collect and analyze data on marine mammal abundance, distribution, and genetics of incidentally taken animals.

Comment 15: One commenter believes a measure of fishing effort is needed in order to extrapolate observed takes to total estimated takes. The commenter notes that NMFS has used fish catch, in metric tons, as a proxy for effort because NMFS claims that effort is unknown. Two commenters suggested that something other than catch (e.g., numbers of days fished, hooks used) be used to measure effort.

Response: Information on effort as measured by the number of hooks, number of hauls, days fished, etc. is available for vessels that are observed. However, there is no such measure for unobserved vessels. Because all vessels must report catch, that is the only data that can be used for all vessels, seasons, and areas to determine relative levels of effort. Should another measure of effort become available that can be used for all vessels, seasons, and areas, NMFS will consider modifying the analytical approach.

Comment 16: One commenter believes the NMFS' analysts who calculate the mortality and serious injury rates should re-examine assumptions made about the statistical distribution from which the sample is drawn (i.e., discrete versus continuous, symmetric versus asymmetric).

Response: Assumptions about the statistical distribution will affect the 95–percent confidence intervals around a mean, but will not affect the mean annual level of take, which is the value used to determine in which category a fishery should be placed in the LOF. NMFS has re-examined how the 95–percent confidence limits should be calculated, and has decided that using a natural log-transformation (Burnham et al., 1987), which uses the original calculated coefficients of variation is a better approach. This approach will yield positive, non-symmetric confidence limits for the bycatch estimation.

Comment 17: One commenter notes that estimates of takes are rounded to the nearest whole number of animals and suggests that NMFS state these rounding rules and adjust confidence limits.

Response: Estimates of takes in each strata are calculated by exact decimals, the decimal strata estimates are added to develop annual take estimates and 5–year averages. In future technical reports, NMFS will report estimates and confidence limits to two decimal places. Summary tables may, at times, show integers for presentation purposes. In these cases, NMFS will follow common rounding practices: if the number ends in a value less than 5, the estimate will be rounded down; if the number ends in a value greater than or equal to 5, the number will be rounded up.

Comment 18: One commenter notes that in certain cases, unobserved takes reported by the vessel crew on a monitored ship was added to an estimated take level using observed takes. The commenter believes this is problematic and alters the statistical properties of the take estimates.

Response: Takes that are not seen by the observer on an observed trip are not included in the estimates of total take. For instance, in 2001, there was one observed take of a killer whale in a monitored haul in the BSAI flatfish trawl fishery; this extrapolated to an estimate of 2 killer whales taken in that year. In 2001, an observer reported a single killer whale mortality and provided the following comment: ''Skipper reported seeing a large pool of bright red blood emerge from prop. into wake following a loud noise accompanied by a shudder of the vessel. I thought it had been a raising of trawl doors, but we weren't hauling back. This pod had been feeding regularly on our discards.'' Although this description is conceptually identical to other situations where killer whales were killed by a propeller strike, because this interaction was not witnessed by the observer, it was not included in the estimate or used to justify a change in classification on the LOF.

Comment 19: Two commenters identified some confusion about the analytical techniques used to extrapolate from observed serious injury/mortality events to estimates of total serious injury mortality. Commenters are concerned that mortality/serious injury events that were seen, but that did not occur in monitored hauls (so-called ''unobserved takes'') are included in the extrapolation made to develop an estimated level of serious injury and mortality.

The commenter was also concerned that the estimated number of takes listed in the SARs cannot be directly calculated simply by using the effort information also included in the SARs.

Response: The fishing effort and marine mammal bycatch data for the groundfish fisheries of Alaska are partitioned into hundreds of strata differentiated by year, statistical fishing area (517, 610, etc.), fishing gear (trawl, longline, jig, and pot), fishery target (pollock, flatfish, sablefish, etc.), vessel type (processor, mothership, or catcher-only vessel), and four-week fishing period throughout the year (Catch Accounting System or Blend data weeks). Estimates of bycatch are calculated for each individual stratum and the decimal values of the resulting estimates/variance for all strata are then summed to yield the regional/annual estimates. The effort information included in the SARs is the pooled effort. The pooled effort shown in the SAR cannot be directly used to calculate the estimated bycatch from the observed bycatch because effort in each strata, not the pooled effort, is used to calculate an estimated bycatch rate.

If there are no observed marine mammal serious injury/mortality events in either monitored or unmonitored sets in a particular strata, NMFS assigns ''zero'' as the level of bycatch for that strata. In this respect, the final regional estimates are conservative. Mortalities/serious injury events actually seen by observers in designated unmonitored sets are only added to the calculated ratio estimates in two circumstances: (1) there were no observed takes in designated monitored sets (zero variance), but there were events seen and reported by either the observer, the crew, or the captain, or (2) the calculated rounded ratio estimate is lower than total number mortalities actually seen by observers in all sets on NORPAC cruises. In both cases, the added mortalities are not double counted, but known minimums are corrected. Reported takes that do not occur in monitored hauls are never used in an extrapolation to a total estimated take; in the two cases identified above, they are simply added to the calculated estimates based on monitored hauls.

Comment 20: One commenter noted that the fishery-wide estimate of total take includes both estimates from observer programs and information from logbooks. The commenter believes this

procedure double counts interactions, artificially and incorrectly exaggerating the number of takes.

Response: The MMPA requires that the SARs contain an estimate of total fishery-related mortality and serious injury. Clearly, because not all commercial fisheries are observed, this total estimate of fishery-related mortality and serious injury will combine different sources of information, such as that from observer programs, logbooks, and stranding information. However, only one source of data is used for each fishery to avoid including the same take more than once in the total estimate of take. For instance, because the BSAI pollock trawl fishery is observed, only observer data are used to estimate levels of serious injury and mortality for this fishery. If there is an existing logbook report on a particular event in this fishery, it would be ignored. In contrast, for fisheries never observed, logbook data (called ''self reports'' in the SARs) or stranding data are used as a minimum estimate of the level of mortality/serious injury.

NMFS disagrees that the statistical properties of combining data in this manner may be problematic. Data from logbooks or strandings are never combined with observer data. Data from logbooks or strandings are only used to determine a minimum estimate of the level of mortality/serious injury in a particular fishery when no observer data are available for that fishery. While the SARs do include a coefficient of variation for the total annual mortality level for all fisheries, these coefficients of variation reflect only the confidence in the observer data.

Comment 21: One commenter notes that the LOF does not take into account injuries or mortalities of marine mammals that occur as a result of entanglement in marine debris. In addition, the analysis does not take into account the cumulative effects of all mortality sources.

Response: This is correct. The MMPA and the implementing regulations for section 118 describe a process for classifying U.S. commercial fisheries based on the level of serious injury and mortality incidental to those fisheries relative to stock-specific PBR levels, and provide a means to manage incidental takes by commercial fisheries. Cumulative impacts of all possible sources of mortality are not specifically assessed or managed in the LOF process.

Comment 22: The commenter supports reclassification of the five Alaska fisheries.

Response: NMFS has reclassified these fisheries.

Comment 23: One commenter suggested that NMFS review the monitoring and management scheme of Alaska trawl fisheries to ensure adequate protection of humpbacks.

Response: NMFS believes that the monitoring and management of Alaska trawl fisheries is more than sufficient to ensure adequate protection of humpback whales given the high observer coverage and low level of annual serious injury and mortality of humpback whales in these fisheries.

Comment 24: One commenter noted that the timelines for publishing the SARs and the LOF do not match up, so old data are used for the classifying fisheries on the LOF because of the time it takes to incorporate new data into the SARs.

Response: The timing of the annual publication of the marine mammal SARs and the LOF are not linked. The SARs are reviewed annually for stocks listed as endangered or threatened under the ESA, and depleted under the MMPA. Stocks not listed as endangered, threatened, or depleted are updated on a 3–year cycle, or when significant new information becomes available. However, because new information on abundance, rates of population increase, or stock structure typically become available only every few years, it is reasonable to rely on abundance information and PBR levels that are a few years old.

In contrast, an analysis of the levels of serious injury and mortality of all marine mammal stocks incidental to commercial fisheries is updated every year for all stocks for the purpose of categorizing fisheries in the LOF. The most recent five years of data are used where available. However, for observer data, there is generally a 2–year time lag between when the most recent data were collected and the year for which the new LOF is proposed. For example, data from the North Pacific Groundfish Observer Program used in the analysis for the 2005 proposed List of Fisheries was collected between 1999–2003. The reason for this time lag is that the year in which the data were collected must be a completed year to assure that all data from all fisheries were available for the analysis. Thus, data collected in calendar year 2003 are analyzed in 2004. Further, the proposed LOF is generally proposed in the year prior to the year it will take effect. The 2005 proposed List of Fisheries was proposed in 2004.

The abundance, stock structure, and PBR level information in the most current published SAR is used in the analyses for each annual proposed LOF. Newer abundance information may be available between the publication of the proposed and final LOFs, but NMFS does not typically update analyses between the proposed rule and final LOFs, because this is a time consuming, annual process which will be repeated the following year. Additionally, NMFS cannot finalize any changes that have not already been proposed in the **Federal Register** and available for public comment. Availability of new information is a continuous process, and delays to in publishing the LOF would be endless if the agency updated the LOF every time new information was available. To avoid such delays the newest available information can be incorporated into the next proposed LOF the following year.

NMFS may, as it is doing for this LOF, use more current fishery-related mortality data than are included in the most recent published SAR. For this LOF, NMFS relied upon a draft report that was circulated to the public in February 2005.

Comment 25: One commenter questioned why NMFS uses a lower percentage when calculating how observed takes extrapolate to total takes if some fisheries have observer coverage levels of 100–percent. For example, the participants in the hook and line fishery for turbot are all catcher-processors and generally have 100–percent observer coverage. All vessels in this fishery over 125ft (38.1m) have 100–percent observer coverage, and vessels between 60ft (18.28m) and 125ft (38.1m)have 30–percent observer coverage; because the turbot fleet only targets turbot once per year, and an observer is required during that one trip, effectively the observer coverage is 100 percent. Further, the November 2000 Biological Opinion from the ESA section 7 consultation on the fishery shows that 100 percent of the turbot hook and line fishery is observed. Therefore, the SARs are incorrect in stating that the observer coverage for this fishery is between 27–80 percent.

Response: For the analysis of marine mammal serious injury/mortality incidental to the Alaska groundfish fisheries, observer coverage is measured as the percent of the total catch that is monitored by observers. Thus, there is a difference between the statement ''100–percent of the fishery is observed'' and the actual percent of the catch that is monitored by observers. Even in a fishery where every vessel carries at least one observer, there are times when observers must sleep or eat. Thus, not all catch in all hauls or sets on an observed vessel are actually monitored by an observer. The highest observer

coverage in the groundfish fisheries of Alaska, in terms of the percent of the catch that is monitored, is approximately 80–percent.

Comment 26: One commenter noted that the BSAI turbot longline fishery has historically been small and various sources of information document that participation has declined in recent years, in part due to killer whale predation on longline catch. The commenter believes the fishery should remain in Category III because the only killer whale take occurred in 1999, so using the most recent 5 years of data (2000–2004) results in a mean annual mortality rate of 0.0 killer whales per year.

Response: The observer data set analyzed for the 2005 LOF for the Federal fisheries were collected from 1999 through 2003. These data and the Tier 2 analysis indicate that the BSAI turbot fishery meets the threshold for Category II for the 2005 LOF. The 2006 LOF will analyze data collected from 2000 through 2004. The BSAI turbot fishery will be proposed to be placed in the appropriate category for the 2006 LOF according to the Tier 2 analysis using those data. The LOF is an annual process, and the category to which a fishery is assigned may vary from year to year. See the responses to Comments 15 and 24 for additional explanation on the timing of the LOF process and the data used in the analyses.

Comment 27: One commenter believes NMFS has incorrectly estimated the number of vessels participating in the turbot fishery; the number is too high.

Response: A target is calculated as the dominant retained species for a vessel by week, gear, and reporting area. In 1999, 31 catcher processors targeted Greenland turbot. Effort in the Greenland turbot fishery declined over the years to 12 catcher processors targeting Greenland turbot in 2003. Table 1. List of Fisheries Commercial Fisheries in the Pacific Ocean will be corrected in the 2006 LOF.

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

Comment 28: Several commenters supported the proposed reclassification of the Mid-Atlantic and Northeast bottom trawl fisheries from Category III to Category II.

Response: NMFS has reclassified both the Mid-Atlantic and Northeast bottom trawl fisheries in this final rule.

Comment 29: Two commenters believe NMFS should classify the Mid-Atlantic bottom trawl fishery in Category I instead of Category II as proposed. One commenter feels NMFS should classify the fishery in Category I until the agency can determine whether short-finned or long-finned pilot whales are being seriously injured or killed incidental to this fishery. The commenter is concerned that grouping the two species together when estimating abundance and mortality may elevate risk if one species is less abundant than the other, thus disproportionately estimating serious injury and mortality.

Response: Because the two species of pilot whales that occur in the Atlantic are very similar in appearance, fishery observers and scientists cannot reliably visually identify pilot whales at the species level. Therefore, at this time, it is not possible to separately estimate total fishery-related serious injury and mortality of long-finned and short-finned pilot whales. The Atlantic Scientific Review Group advised NMFS to adopt the risk-averse strategy of assuming that either species might have been subject to the observed fishery-related serious injury and mortality. Therefore, NMFS cannot conduct a tier-analysis separately for each species because we do not have species-specific abundance estimates or PBR levels for long finned and short-finned pilot whales.

NMFS is currently analyzing biopsy samples taken during 2004 and 2005 abundance surveys to obtain more information on pilot whale stock structure and range. NMFS expects to have these estimates available in the 2007 SARs. Additionally, NMFS is working towards having observers obtain biopsy samples of animals taken incidental to commercial fishing operations.

At this time, NMFS does not have adequate information to reclassify this fishery in Category I, but will revisit the tier analysis as new information becomes available.

Comment 30: One commenter supported the proposed removal of the Gulf of Maine/Bay of Fundy stock of harbor porpoise, Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins from the list of species/stocks incidentally injured or killed by the Long Island Sound inshore gillnet fishery.

Response: NMFS has removed these three stocks because NMFS has not documented any marine mammal serious injuries or deaths incidental to the Long Island Sound inshore gillnet fishery in recent years.

Comment 31: One commenter objected to the proposed name changes for the Delaware Bay inshore gillnet fishery (proposed as ''Delaware River inshore gillnet fishery'') and the Mid-Atlantic coastal gillnet fishery (proposed as ''Mid-Atlantic gillnet fishery''). The commenter feels the fisheries as named and described do not adequately reflect gillnetting in Delaware Bay. Further, the proposed changes would put undue burden on fishermen that would now fall under the Mid-Atlantic gillnet fishery. The commenter requested that all gillnetting in Delaware Bay be included on th e LOF in Category III as the ''Delaware Bay inshore gillnet fishery''.

Response: NMFS would like to clarify that the proposed name changes do not change the designation of any gillnet fisheries operating in Delaware Bay. The 1994 final LOF (59 FR 43820, August 25, 1994) classified the current Category III Delaware Bay inshore gillnet fishery as those gillnet fisheries operating north of a line drawn from the southern point of Nantuxent Cove (mouth of Cedar Creek), NJ to the southern boundary of Bombay Hook National Wildlife Refuge at Kelley Island (Port Mahon), DE. Gillnet fisheries operating south of this line have always been included under the Mid-Atlantic gillnet fishery (previously the ''Mid-Atlantic coastal gillnet fishery''), a Category I fishery based on serious injuries and mortalities of harbor porpoise and bottlenose dolphins incidental to the fishery. NMFS has documented strandings of these stocks inside Delaware Bay as well as up into the Delaware River. The previous name, ''Delaware Bay inshore gillnet fishery'' is potentially misleading because it implies all fisheries operating throughout Delaware Bay are considered as Category III fisheries. Therefore, NMFS has changed the name of the fishery to the ''Delaware River inshore gillnet fishery''.

The Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations apply to waters inside Delaware Bay between the COLREGS and the line defined above between Nantuxent Cove and Kelley Island. NMFS would like to clarify an error in the proposed 2005 LOF (69 FR 70100, December 2, 2004) under the heading ''Delaware Bay Inshore Gillnet Fishery'', that stated, ''Moreover, gillnet fisheries operating inland of the COLREGS would be placed in the Delaware River inshore gillnet fishery and would not be subjected to ALWTRP regulations.'' The word COLREGS should be substituted with the phrase ''southern point of Nantuxent Cove, NJ to the southern end of Kelley Island, Port Mahon, DE''.

Comment 32: One commenter disagreed with NMFS' proposed reclassification of the Northeast bottom trawl fishery from Category III to

Category II and feels it is premature and scientifically unfounded. The commenter questioned NMFS' abundance estimates for Atlantic white-sided dolphins.

Response: To estimate Atlantic white-sided dolphin abundance, NMFS used established scientific methods that were reviewed and accepted by the Atlantic Scientific Review Group; this estimate is based on the most recent and reliable available data. At the time NMFS conducted the Tier analysis, no mortality estimate was available for the Western North Atlantic stock of white-sided dolphins taken incidental to the Northeast bottom trawl fishery. Therefore, in the Tier analysis, NMFS used observer data from 2003, during which 12 animals were observed seriously injured or killed incidental to the fishery. This count represents the number of mortalities actually recorded by fishery observers and have not been expanded to account for the portion of the fishery that was not observed. In other words, if NMFS had extrapolated the number of mortalities across the entire fishery, the number of mortalities would be higher. Because NMFS only had one year of data, the agency used this data in the Tier analysis. These 12 observed serious injuries and mortalities represent 3.3 percent of the stock's PBR level (364). Because this level of mortality and serious injury exceeds 1 percent but is less than 50 percent of the stock's PBR level, NMFS is classifying this fishery as a Category II fishery.

Comment 33: One commenter requested that NMFS not finalize the proposed inclusion of harbor porpoise on the list of species/stocks incidentally injured or killed in the Northeast bottom trawl fishery because the animal was badly decomposed and the trawl duration was five hours.

Response: NMFS agrees and has not included the Gulf of Maine/Bay of Fundy stock of harbor porpoise on the list of species and stocks injured or killed incidental to the Northeast bottom trawl fishery.

Comment 34: One commenter requested NMFS to remove the Western North Atlantic stocks of offshore bottlenose and striped dolphins from the list of species and stocks seriously injured or killed in the Northeast bottom trawl fishery, as there were no documented serious injuries or mortalities between 2000 and 2004.

Response: NMFS agrees and will propose removing these stocks in the 2006 LOF.

Comment 35: Two commenters urged NMFS to reclassify the Gulf of Mexico blue crab trap/pot fishery in Category II and the Gulf of Mexico menhaden purse seine fishery in Category I.

Response: At this time, the available information supports the current classifications for these fisheries. NMFS has no new information with which to evaluate and reclassify these fisheries. As stated in the 2004 final LOF (69 FR 48407, 48414, August 10, 2004), NMFS believes it is necessary to investigate stock structure of bottlenose dolphins in the Gulf of Mexico and intends to reevaluate these fisheries' classification as new information becomes available.

Comments on the LOF EA

Comment 36: Several commenters recommended that NMFS revise the 1995 EA, which analyzed the LOF classification process.

Response: NMFS drafted a revised EA on the process for classifying U.S. commercial fisheries according to the level of marine mammal serious injury and mortality incidental to each fishery in August 2005 and solicited public comments on the document from August 25 to October 24, 2005. This EA was finalized in December 2005.

Comment 37: Several commenters oppose the process of classifying fisheries on the LOF.

Response: NMFS is required by MMPA section 118 to classify fisheries. Please see the **SUPPLEMENTARY INFORMATION** in this final rule.

Comment 38: One commenter believes the EA is deficient because it only focuses on the thresholds for categorizing fisheries. The commenter feels the EA should consider how minimum population estimates (Nmin) and recovery factors (Rf) are defined as well as how serious injuries or mortalities are assigned to a particular marine mammal stock.

Response: Nmin and the Rf, while related to the LOF classification scheme, are not actually part of the LOF process. Nmin is defined in MMPA section 3(27) as an estimate of the number of animals in a stock that is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information and provides reasonable assurance that the stock size is equal to or greater than the estimate. Nmin is one component of the equation used to calculate PBR for a particular marine mammal stock. PBR is also defined in MMPA section 3(20). A recovery factor of between 0.1 and 1.0 is included in the PBR equation.

Pursuant to MMPA section 117, NMFS estimates PBR levels for each marine mammal stock according to the definitions in the MMPA. NMFS reports these PBR levels in individual SARs. Similar to estimating PBR, assigning serious injuries and mortalities to a particular stock also occurs during the stock assessment process. Each SAR is vetted through the appropriate SRG, who in turn reviews the reports based on their scientific expertise. Draft SARs are also available for public comment.

The process for estimating PBR (i.e., establishing Nmin and recovery factors) under MMPA section 117 is a separate process that occurs before such information is used in the process for classifying fisheries on the LOF under MMPA section 118. This is also true for assigning serious injuries and mortalities to individual stocks. Members of the public who wish to comment on elements of the stock assessment process would need to do so during the comment period on draft SARs.

Summary of Changes to the LOF for 2005

The following summarizes changes to the LOF in 2005 in fishery classification, fisheries listed on the LOF, the number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery. The LOF for 2005 is identical to the LOF for 2004 with the following exceptions.

Commercial Fisheries in the Pacific Ocean

Fishery Classification

The ''CA/OR Thresher Shark/Swordfish Drift Gillnet (≥14 in. Mesh) Fishery'' is elevated from Category II to Category I.

The following fisheries are elevated from Category III to Category II: ''AK Bering Sea, Aleutian Islands Flatfish Trawl Fishery,'' ''AK Bering Sea, Aleutian Islands Pollock Trawl Fishery,'' ''AK Bering Sea, Aleutian Islands Greenland Turbot Longline Fishery,'' ''AK Bering Sea, Aleutian Islands Pacific Cod Longline Fishery,'' and ''AK Bering Sea Sablefish Pot Fishery.''

Fishery Name and Organizational Changes and Clarifications

The ''Bering Sea, Aleutian Islands Cod Longline Fishery'' is renamed the ''Bering Sea, Aleutian Islands Pacific Cod Longline Fishery.''

Number of Vessels/Persons

The estimated number of participants in the ''OR Swordfish Floating Longline Fishery'' is updated to 0.

The estimated number of participants in the CA/OR thresher shark/swordfish drift gillnet fishery is updated to 85.

The estimated number of participants in the CA anchovy, mackerel, tuna purse seine fishery is updated to 110.

The estimated number of participants in the California pelagic longline fishery is updated to 6.

The estimated number of participants in the California sardine purse seine fishery is updated to 110.

The estimated number of participants in the California swordfish harpoon fishery is updated to 30.

List of Species and Stocks that are Incidentally Injured or Killed

The Eastern North Pacific stock of gray whales is added to the list of marine mammal species and stocks incidentally injured or killed by the WA, OR, CA crab pot fishery.

The CA/OR/WA stocks of long-beaked and short-beaked common dolphins and the U.S. stock of California sea lions are added to the list of marine mammal species and stocks incidentally injured or killed by the CA yellowtail barracuda, white seabass, and tuna drift gillnet fishery.

The CA/OR/WA stocks of Risso's dolphin is added to the list of marine mammal species and stocks incidentally injured or killed by the California pelagic longline fishery.

The U.S. stock of California sea lions is added to the list of marine mammal species and stocks incidentally injured or killed by the California purse seine fishery.

The Eastern North Pacific resident and transient stocks of killer whales are added to the list of marine mammal species and stocks incidentally injured or killed by the AK BSAI Pacific cod longline fishery.

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

Fishery Classification

The ''Mid-Atlantic bottom trawl fishery'' (name change from ''Mid-Atlantic mixed species trawl fishery,'' see Fishery Name and Organizational Changes and Clarifications section) is elevated from Category III to Category II.

The ''Northeast bottom trawl fishery,'' (proposed name change from ''North Atlantic bottom trawl fishery,'' see Fishery Name and Organizational Changes and Clarifications section) is elevated from Category III to Category II.

Addition of Fisheries to the LOF

The ''Atlantic shellfish bottom trawl fishery'' is added to the LOF as a Category III fishery that encompasses the calico scallops trawl fishery, crab trawl fishery, Georgia/South Carolina/Maryland whelk trawl fishery, Gulf of Maine/Mid-Atlantic sea scallops trawl fishery, and Gulf of Maine northern shrimp trawl fishery.

Removal of Fisheries from the LOF

The following trawl fisheries are removed from the 2005 LOF: ''U.S. Atlantic monkfish trawl fishery,'' ''Calico Scallops Trawl Fishery,'' ''Crab Trawl Fishery,'' ''Georgia/South Carolina/Maryland Whelk Trawl Fishery,'' ''Gulf of Maine/Mid-Atlantic Sea Scallops Trawl Fishery,'' and ''Gulf of Maine Northern Shrimp Trawl Fishery.''

Fishery Name and Organizational Changes and Clarifications

The ''Atlantic herring mid-water trawl fishery (including pair trawl)'' is renamed the ''Northeast mid-water trawl fishery.''

The ''Atlantic squid, mackerel, and butterfish trawl fishery'' is renamed the ''Mid-Atlantic mid-water trawl fishery (including pair trawl).'' NMFS unintentionally omitted the parenthetical information in the proposed 2005 LOF, but did note in the explanation of the name change that the agency intended to include all components of this fishery.

The ''Delaware Bay inshore gillnet fishery'' is renamed the ''Delaware River inshore gillnet fishery.''

The ''Gulf of Maine tub trawl groundfish bottom longline/hook-and-line fishery'' is renamed the ''Northeast/Mid-Atlantic bottom longline/hook-and-line fishery.''

The ''Mid-Atlantic coastal gillnet fishery'' is renamed the ''Mid-Atlantic gillnet fishery.''

The ''Mid-Atlantic mixed species trawl fishery'' is renamed the ''Mid-Atlantic bottom trawl fishery.''

The ''North Atlantic bottom trawl fishery'' is renamed the ''Northeast bottom trawl fishery.''

Number of Vessels/Persons

The estimated number of participants in the ''Atlantic shellfish bottom trawl fishery'' is updated to 972.

List of Species and Stocks that are Incidentally Injured or Killed

Atlantic Mixed Species Trap/Pot Fishery

The Canadian east coast stock of minke whales and the Gulf of Maine/Bay of Fundy stock of harbor porpoise are removed from the list of marine mammal species and stocks incidentally injured or killed by the Atlantic mixed species trap/pot fishery.

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

The Western North Atlantic stock of striped dolphins, the Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Western North Atlantic stock of humpback whales, and the Canadian East coast stock of minke whales are removed from the list of marine mammal species and stocks incidentally injured or killed by the Atlantic Ocean, Caribbean, and Gulf of Mexico large pelagics longline fishery.

The Western North Atlantic stocks of mesoplodon beaked whales and Cuvier's beaked whales, and the Northern Gulf of Mexico stock of short-finned pilot whales are added to the list of marine mammal species and stocks incidentally injured or killed by the Atlantic Ocean, Caribbean, and Gulf of Mexico large pelagics longline fishery.

Chesapeake Bay Inshore Gillnet Fishery

Gulf of Maine/Bay of Fundy stock of harbor porpoise is removed from the list of marine mammal species and stocks incidentally injured or killed by the Chesapeake Bay inshore gillnet fishery.

Delaware River Inshore Gillnet Fishery

The Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins are removed from the list of marine mammal species and stocks incidentally injured or killed by the Delaware River inshore gillnet fishery (proposed name change from Delaware Bay inshore gillnet fishery, see Fishery Name and Organizational Changes and Clarifications section).

Gulf of Maine Herring and Atlantic Mackerel Stop Seine/Weir Fishery

The Western North Atlantic stocks of humpback whales and North Atlantic right whales are removed from the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Maine herring and Atlantic mackerel stop seine/weir fishery.

The Western North Atlantic stock of Atlantic white-sided dolphins is added to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Maine herring and Atlantic mackerel stop seine/weir fishery.

Gulf of Mexico Butterfish Trawl Fishery

The Eastern Gulf of Mexico stocks of Atlantic spotted dolphins and pantropical spotted dolphins are removed from the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico butterfish trawl fishery.

The Northern Gulf of Mexico outer continental shelf stock and Northern Gulf of Mexico continental shelf edge and slope stock of bottlenose dolphins

are added to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico butterfish trawl fishery.

Gulf of Mexico Menhaden Purse Seine Fishery

The Eastern Gulf of Mexico coastal stock of bottlenose dolphins and the Gulf of Mexico bay, sound and estuarine stock of bottlenose dolphins are added to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico menhaden purse seine fishery.

Long Island Sound Inshore Gillnet Fishery

The Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins are removed from the list of marine mammal species and stocks incidentally injured or killed by the Long Island Sound inshore gillnet fishery.

Mid-Atlantic Bottom Trawl Fishery

The Western North Atlantic stocks of long-finned pilot whales, short-finned pilot whales, and common dolphins are added to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic bottom trawl fishery.

Mid-Atlantic Gillnet Fishery

The Western North Atlantic stock of gray seals and the Western North Atlantic stock of fin whales are added to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic gillnet fishery.

Mid-Atlantic Menhaden Purse Seine Fishery

The Western North Atlantic stock of humpback whales is removed from the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic purse seine fishery.

Mid-Atlantic Mid-water Trawl Fishery

The Western North Atlantic offshore stock of bottlenose dolphins is added to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic mid-water trawl fishery.

Northeast Bottom Trawl Fishery

The Western North Atlantic stock of harp seals and the Gulf of Maine/Bay of Fundy stock of harbor porpoise are added to the list of marine mammal species and stocks incidentally injured or killed by the Northeast bottom trawl fishery (proposed name change from North Atlantic bottom trawl fishery, see Fishery Name and Organizational Changes and Clarification section).

Northeast/Mid-Atlantic Bottom Longline/Hook-and-Line Fishery

The Western North Atlantic stocks of harbor seals, gray seals, and humpback whales are removed from the list of marine mammal species and stocks incidentally injured or killed by the Northeast/Mid-Atlantic bottom longline/hook-and-line fishery.

Northeast Mid-water Trawl Fishery

The Western North Atlantic stocks of long-finned pilot whales, short-finned pilot whales, and Atlantic white-sided dolphins are added to the list of marine mammal species and stocks incidentally injured or killed by the Northeast mid-water trawl fishery.

Northeast Sink Gillnet Fishery

The Western North Atlantic stocks of killer whales, spotted dolphins, and false killer whales are removed from the list of marine mammal species and stocks incidentally injured or killed by the Northeast sink gillnet fishery.

The Western North Atlantic stocks of Risso's dolphins and hooded seals are added to the list of marine mammal species and stocks incidentally injured or killed by the Northeast sink gillnet fishery.

Rhode Island, Southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) Inshore Gillnet Fishery

The Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins are removed from the list of marine mammal species and stocks incidentally injured or killed by the Rhode Island, Southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet fishery.

Southeastern U.S. Atlantic and Gulf of Mexico Shrimp Trawl Fishery

The Western Gulf of Mexico coastal stock of bottlenose dolphins, the Eastern Gulf of Mexico coastal stock of bottlenose dolphins, the Gulf of Mexico bay, sound, and estuarine stock of bottlenose dolphins, and the Florida stock of the West Indian manatee are added to the list of marine mammal species and stocks incidentally injured or killed by the Southeastern U.S. Atlantic and Gulf of Mexico shrimp trawl fishery.

U.S. Atlantic Tuna Purse Seine Fishery

The Western North Atlantic stocks of long-finned and short-finned pilot whales are added to the list of marine mammal species and stocks incidentally injured or killed by the U.S. Atlantic tuna purse seine fishery. Interactions between each of these marine mammal stocks/species and this fishery have been documented in recent SARs.

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 or stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience serious 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.

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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		
GILLNET FISHERIES:		
CA angel shark/halibut and other species set gillnet (>3.5 in. mesh)	58	California sea lion, U.S. Common dolphin, long-beaked CA Common dolphin, short-beaked, CA/OR/WA Harbor seal, CA Harbor porpoise, Central CA Northern elephant seal, CA breeding Sea otter, CA
CA/OR thresher shark/swordfish drift gillnet (≥14 in. mesh)	85	Baird's beaked whale, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Cuvier's beaked whale, CA/OR/WA Dall's porpoise, CA/OR/WA Fin whale, CA/OR/WA Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA-Mexico Killer whale, CA/OR/WA Pacific coast Long-beaked common dolphin, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Northern elephant seal, CA breeding Northern fur seal, San Miguel Island Northern Pacific white-sided dolphin, CA/OR/WA Northern right-whale dolphin, CA/OR/WA Pygmy sperm whale, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA Southern Pacific white-sided dolphin, CA/OR/WA Sperm whale, CA/OR/WA Steller sea lion, Eastern U.S. Striped dolphin, CA/OR/WA
LONGLINE/SET LINE FISHERIES:		
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line	140	Bottlenose dolphin, HI False killer whales, HI Humpback whale, Central North Pacific Risso's dolphin, HI Short-finned pilot whale, HI Spinner dolphin, HI Sperm whale, HI
Category II		
GILLNET FISHERIES:		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Bristol Bay salmon drift gillnet	1,903	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Spotted seal, AK Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet	1,014	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Spotted seal, AK
AK Cook Inlet salmon drift gillnet	576	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Steller sea lion, Western U.S.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA Harbor seal, GOA Sea otter, AK
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented
AK Peninsula/Aleutian Islands salmon drift gillnet	164	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet	116	Harbor porpoise, Bering Sea Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	541	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Sea Otter, AK Steller sea lion, Western U.S.
AK Southeast salmon drift gillnet	481	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet	170	Gray whale, Eastern North Pacific Harbor seal, Southeast AK
CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery (mesh size > 3.5 inches and < 14 inches)	24	California sea lion, U.S. Long-beaked common dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA

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	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Southeast salmon purse seine	416	Humpback whale, Central North Pacific
CA anchovy, mackerel, tuna purse seine	110	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
TRAWL FISHERIES:		
AK miscellaneous finfish pair trawl	2	None documented
AK Bering Sea, Aleutian Islands flatfish trawl	26	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands pollock trawl	120	Humpback whale, Central North Pacific Humpback whale, Western North Pacific Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Steller sea lion, Western U.S.
LONGLINE/SET LINE FISHERIES:		
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	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient
CA pelagic longline	6	California sea lion, U.S. Risso's dolphin, CA/OR/WA
OR swordfish floating longline	0	None documented
OR blue shark floating longline	1	None documented
POT, RING NET, AND TRAP FISHERIES:		

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
Category III		
GILLNET FISHERIES:		
AK Cook Inlet salmon set gillnet	745	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Steller sea lion, Western U.S.
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Harbor seal, GOA Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less	341	None documented
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented
AK octopus/squid purse seine	2	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
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	110	California sea lion, U.S.
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
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
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
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries	1,530 (330 AK)	None documented
AK salmon troll	2,335	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
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
LONGLINE/SET LINE FISHERIES:		
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
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	8	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	87	None documented
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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
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	California sea lion, U.S. Dall's porpoise, CA/OR/WA Harbor seal, OR/WA coast Northern fur seal, Eastern Pacific Pacific white-sided dolphin, Central North Pacific Steller sea lion, Western U.S.
WA, OR, CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Aleutian Islands sablefish pot	8	None documented
AK Bering Sea, Aleutian Islands Pacific cod pot	76	None documented
AK Bering Sea, Aleutian Islands crab pot	329	None documented
AK Gulf of Alaska crab pot	unknown	None documented
AK Gulf of Alaska Pacific cod pot	154	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	Gray whale, Eastern North Pacific
WA, OR, CA sablefish pot	176	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
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
HANDLINE AND JIG FISHERIES:		
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
HI inshore handline	650	Bottlenose dolphin, HI
HI tuna	144	Bottlenose dolphin, HI Hawaiian monk seal Rough-toothed dolphin, HI
WA groundfish, bottomfish jig	679	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	30	None documented
POUND NET/WEIR FISHERIES:		
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
BAIT PENS:		
WA/OR/CA bait pens	13	None documented
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
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 squiding, spear	267	None documented
WA, CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	None documented
HI "other"	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
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		
GILLNET FISHERIES:		
Mid-Atlantic gillnet	>655	Bottlenose dolphin, WNA coastal Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine Long-finned pilot whale, WNA Minke whale, Canadian east coast Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast sink gillnet	341	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, WNA Minke whale, Canadian east coast North Atlantic right whale, WNA Risso's dolphin, WNA White-sided dolphin, WNA
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	<200	Atlantic spotted dolphin, Northern GMX Atlantic spotted dolphin, WNA Bottlenose dolphin, GMX outer continental shelf Bottlenose dolphin, GMX continental shelf edge and slope Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA Mesoplodon beaked whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Pygmy sperm whale, WNA Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA
TRAP/POT FISHERIES:		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Fin whale, WNA Harbor seal, WNA Humpback whale, WNA Minke whale, Canadian east coast North Atlantic right whale, WNA
TRAWL FISHERIES:		
Mid-Atlantic mid-water trawl (including pair trawl)	620	Bottlenose dolphin, WNA offshore Common dolphin, WNA Long-finned pilot whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA
Category II		
GILLNET FISHERIES:		
Gulf of Mexico gillnet	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal
Northeast anchored float gillnet	133	Harbor seal, WNA Humpback whale, WNA White-sided dolphin, WNA
Northeast drift gillnet	unknown	None documented
Southeast Atlantic gillnet	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	6	Atlantic spotted dolphin, WNA Bottlenose dolphin, WNA coastal North Atlantic right whale, WNA
TRAWL FISHERIES:		
Mid-Atlantic bottom trawl	>1,000	Common dolphin, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA
Northeast mid-water trawl (including pair trawl)	17	Harbor seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast bottom trawl	1,052	Bottlenose dolphin, WNA offshore Common dolphin, WNA Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA Striped dolphin, WNA White-sided dolphin, WNA
TRAP/POT FISHERIES:		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
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
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal
POUND NET FISHERIES:		
Virginia pound net	187	Bottlenose dolphin, WNA coastal
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Chesapeake Bay inshore gillnet	45	None documented
Delaware River inshore gillnet	60	None documented
Long Island Sound inshore gillnet	20	None documented
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet	32	None documented
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	972	None documented
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX outer continental shelf Bottlenose dolphin, Northern GMX continental shelf edge and slope
Gulf of Mexico mixed species trawl	20	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian Manatee, FL
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor 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
U.S. Atlantic tuna purse seine	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
U.S. Mid-Atlantic hand seine	>250	None documented
LONGLINE/HOOK-AND-LINE FISHERIES:		
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	Humpback whale, WNA
Northeast/Mid-Atlantic bottom longline/hook-and-line	46	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	<125	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented
U.S. Mid-Atlantic eel trap/pot	>700	None documented
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	Gray seal, Northwest North Atlantic Harbor porpoise, GME/BF Harbor seal, WNA Minke whale, Canadian east coast White-sided dolphin, WNA
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the North Carolina roe mullet stop net)	751	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel	4,000	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 final rule will not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* 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.

We received and responded to one comment on the economic analysis (Comment 27). This comment did not result in any material change to the factual basis for our certification. As a result, no regulatory flexibility analysis is required, nor was one prepared.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal injuries or moralities 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 collection 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 final rule has been determined not to be significant for the purposes of Executive Order 12866.

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

This final rule will not affect species listed as threatened or endangered under the Endangered Species Act

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

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

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

Dated: December 28, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 122805B]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily retention limit for two of the previously designated restricted fishing days (RFD) should be adjusted. These General category RFDs are being waived to provide reasonable opportunity for utilization of the coastwide General category BFT quota. Therefore, NMFS waives the RFDs for December 31, 2005, and January 1, 2006, and increases the daily retention limit from zero to two large medium or giant BFT on these previously designated RFDs.

DATES: Effective dates for BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2005 BFT fishing year began on June 1, 2005, and ends May 31, 2006. The final initial 2005 BFT specifications and General category effort controls (June 7, 2005; 70 FR 33033) established the following RFD schedule for the 2005 fishing year: All Fridays, Saturdays, and Sundays from November 18, 2005, through January 31, 2006, and Thursday, November 24, 2005, inclusive, provided quota remained available and the fishery was open. RFDs are intended to extend the General category BFT fishery late into the southern Atlantic season. NMFS has determined that the BFT General category daily retention limit for two of the previously designated RFDs should be adjusted as described in Table 1 to provide reasonable opportunity to utilize the coastwide General category BFT quota.

TABLE 1.—EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit category	Effective dates	Area	BFT size class limit
Atlantic tunas General and HMS Charter/Headboat (while fishing commercially).	December 31, 2005, and January 1, 2006.	All	Two BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger.

Adjustment of General Category Daily Retention Limits

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. NMFS has taken multiple actions during the 2005 fishing year in an attempt to allow for maximum utilization of the General category BFT quota. On September 28, 2005 (70 FR 56595), NMFS adjusted the commercial daily BFT retention limit (on non-RFDs), in all areas, for those vessels fishing under the General category quota, to two large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip, effective through January 31, 2006, inclusive, provided quota remained available and the fishery remained open. On November 9, 2005 (70 FR 67929), NMFS waived the previously designated RFDs for the month of November and adjusted the daily retention limit on those RFDs to two large medium or giant BFT. On December 16, 2005 (70 FR 74712), NMFS waived previously designated RFDs for December 16–18, inclusive, and adjusted the daily retention limit on those RFDs to two large medium or giant BFT to provide reasonable opportunity to harvest the coastwide quota.

On December 7, 2005 (70 FR 72724), NMFS adjusted the General category quota by conducting a 200 mt inseason quota transfer to the Reserve category, resulting in an adjusted General category quota of 708.3 mt. This action was taken to account for any potential overharvests that may occur in the Angling category during the 2005 fishing year (June 1, 2005 through May 31, 2006) and to ensure that U.S. BFT harvest is consistent with international and domestic mandates.

Catch rates in the BFT General category fishery have generally been low and weather conditions are predicted to be favorable over the weekend. Based on a review of dealer reports, daily landing trends, available quota, weather conditions, and the availability of BFT on the fishing grounds, NMFS has determined that waiving two RFDs established for December 31, 2005, and January 1, 2006, and increasing the General category daily BFT retention limit on those RFDs is warranted to assist the fishery in accessing the available quota. Therefore, NMFS adjusts the General category daily BFT