ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0008, Notice 3; FRL–8578–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Double Eagle Refinery Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is issuing a Notice of Intent to Delete the Double Eagle Refinery Co. Superfund Site (Site) located in Oklahoma City, Oklahoma, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Oklahoma, through the Oklahoma Department of Environmental Quality (ODEQ), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments concerning the proposed deletion of this Site from the NPL must be received by July 14, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1989–0008, Notice 3, by one of the following methods:

- *http://www.regulations.gov*. Follow online instructions for submitting comments.
- *E-mail: walters.donn@epa.gov*.
- *Fax:* 1–214–665–6660.
- *Mail:* Donn Walters, Community Involvement, U.S. EPA, Region 6 (6SF–TS), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6483 or 1–800–533–3508.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1989–0008, Notice 3. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the following information repositories:

U.S. EPA Online Library System at *http://www.epa.gov/natlibra/ols.htm*;

U.S. EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, (214) 665–6617, by appointment only Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.;

Ralph Ellison Library, 2000 Northeast 23, Oklahoma City, OK 73111, (409) 643–5979, Monday through Wednesday 9 a.m. to 9 p.m., Thursday and Friday 9 a.m. to 6 p.m., Saturday 10 a.m. to 4 p.m.;

Oklahoma Department of Environmental Quality (ODEQ), 707 North Robinson, Oklahoma City, OK 73101, (512) 239–2920, Monday through Friday 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Bartolome Canellas, Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, 6SF–RL, 1445 Ross Avenue, Dallas, Texas 75202–2733, *canellas.bart@epa.gov* or (214) 665–6662 or 1–800–533–3508.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Double Eagle Refinery Co. Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this Notice of Intent to Delete or the direct final Notice of Deletion, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information see the direct final Notice of Deletion located in the *Rules* section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: May 23, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E8–13366 Filed 6–12–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 080204115–8135–01]

RIN 0648–AW48

List of Fisheries for 2009

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

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its proposed List of Fisheries (LOF) for 2009, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2009 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: Comments must be received by August 12, 2008.

ADDRESSES: Send comments by anyone of the following methods.

(1) Electronic Submissions: Submit all electronic comments through the Federal eRulemaking portal: *http://www.regulations.gov* (follow instructions for submitting comments).

(2) Mail: Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

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

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

FOR FURTHER INFORMATION CONTACT: Melissa Andersen, Office of Protected Resources, 301–713–2322; David Gouveia, Northeast Region, 978–281–9328; Nancy Young, Southeast Region, 727–824–5312; Elizabeth Petras, Southwest Region, 562–980–3238; Brent Norberg, Northwest Region, 206–526–6733; Bridget Mansfield, Alaska Region, 907–586–7642; Lisa Van Atta, Pacific Islands Region, 808–944–2257. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the LOF and the Marine Mammal Authorization Program, including registration procedures and forms, current and past LOFs, observer requirements, and marine mammal injury/mortality reporting forms and submittal procedures, may be obtained at: *http://www.nmfs.noaa.gov/pr/interactions/lof/*, or from any NMFS Regional Office at the addresses listed below.

Regional Offices

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

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

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

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

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

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI 96814–4700, 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 take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SAR) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

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

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

Fishery Classification Criteria

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

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

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

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

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

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

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

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

Other Criteria That May Be Considered

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

How Does NMFS Determine which Species or Stocks are Included as Incidentally Killed or Seriously Injured in a Fishery?

The LOF includes a list of marine mammal species or stocks incidentally killed or seriously injured in each commercial fishery, based on the level of mortality or serious injury in each fishery relative to the PBR level for each stock. To determine which species or stocks are included as incidentally killed or seriously injured in a fishery, NMFS annually reviews the information presented in the current SARs. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of mortality or serious injury incidental to commercial fishing operations. NMFS also reviews other sources of new information, including observer data, stranding data, and fisher self-reports.

In the absence of reliable information on the level of mortality or serious injury of a marine mammal stock, or insufficient observer data, NMFS will determine whether a species or stock should be added to, or deleted from, the list by considering other factors such as: Changes in gear used, increases or decreases in fishing effort, increases or decreases in the level of observer coverage, and/or changes in fishery management that are expected to lead to decreases in interactions with a given marine mammal stock (such as a fishery management plan or a take reduction plan). NMFS will provide case-specific justification in the LOF for changes to the list of species or stocks incidentally killed or seriously injured.

How Does NMFS Determine the Level of Observer Coverage in a Fishery?

Data obtained from observers and the level of observer coverage are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. The best available information on the level of observer coverage, and the spatial and temporal distribution of observed marine mammal interactions, is presented in the SARs. Starting with the 2005 SARs, each SAR includes an appendix with detailed descriptions of each Category I and II fishery in the LOF, including observer coverage. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Information presented in the SARs' appendices includes: level of observer coverage, target species, levels of fishing effort, spatial and temporal distribution of fishing effort, characteristics of fishing gear and operations, management and regulations, and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resource's website at: *http://www.nmfs.noaa.gov/pr/sars/*. Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: *http://www.st.nmfs.gov/st4/nop/*.

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

This proposed rule includes three 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; Table 3 lists all U.S.-authorized fisheries on the high seas. A fourth table, Table 4, lists all fisheries managed under applicable take reduction plans or teams.

Are High Seas Fisheries Included on the LOF?

NMFS received public comments for the 2007 LOF (72 FR 14466, March 28, 2007, comment/response 9) and the 2008 LOF (72 FR 66048, November 27, 2007, comment/response 5) requesting NMFS include high seas fisheries on the LOF. In response to these comments, NMFS analyzed the relationship between MMPA sections 117 and 118 and the High Seas Fishing Compliance Act (HSFCA) and determined that it is appropriate to include U.S. fishers fishing on the high seas on the LOF. Beginning with the 2009 LOF, NMFS proposes to include high seas fisheries in Table 3 of the LOF. NMFS compiled information on vessels issued a HSFCA permit to identify fisheries operating on the high seas and to ensure that all high seas fisheries are included in the LOF, particularly those that do not have a component within waters under the jurisdiction of the United States (e.g., State waters, the U.S. territorial sea, and the U.S. Exclusive Economic Zone (EEZ); hereafter referred to as ''U.S. waters'').

NMFS acknowledges that many fisheries currently operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. NMFS has designated those fisheries in Tables 1, 2, and 3 by a ''*'' after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these U.S. waters fisheries do not necessarily represent additional fishers that are not accounted for in Tables 1 and 2. Many fishers holding these permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Table 1 and 2. For example, the fishers participating in the Category I ''CA/OR thresher shark/swordfish drift gillnet fishery'' may operate in both U.S. waters and the adjacent high seas, thus the high seas component of this fishery (listed in Table 3 as the ''Pacific Highly Migratory Species'' drift gillnet) is not a separate fishery, but an extension of the fishery operating within U.S. waters (listed in Table 1).

How Does NMFS Authorize U.S. Vessels to Participate in High Seas Fisheries?

NMFS issues high seas fishing permits, valid for five years, under the HSFCA. To fish under a high seas permit, a fisherman must also possess any required permits issued under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (with the exception of the South

Pacific Tuna Treaty fisheries, the Pacific Tuna Fisheries (Eastern Tropical Pacific purse seine vessels) and the South Pacific Albacore Troll fishery), and any permits issued by NMFS to fish within the convention area of a Regional Fishery Management Organization. Under the current permitting system, however, a fisherman can obtain a high seas permit prior to obtaining any necessary MSA permits. Similarly, a fisherman may have a HSFCA permit that was issued prior to changes in permits issued under the MSA. Therefore, some fishers possess valid HSFCA permits without the ability to fish under the permit. For this reason, the number of HSFCA permits displayed in Table 3 of this proposed rule is likely higher than the actual fishing effort by U.S. vessels on the high seas.

As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). There are currently seven U.S.-authorized high seas fisheries: Atlantic Highly Migratory Species Fisheries, Pacific Highly Migratory Species Fisheries, Western Pacific Pelagic Fisheries, South Pacific Albacore Troll Fishing, Pacific Tuna Fisheries, South Pacific Tuna Fisheries, and Antarctic Marine Living Resources. The LOF will not include the ''Pacific (Eastern Tropical) Tuna Fisheries'' because these fisheries are managed under Title III of the MMPA, separate from those fisheries subject to the LOF under section 118. Permits obtained prior to 2004 for fisheries that are no longer authorized by the HSFCA, but for which the 5–year permit is still valid, are included on the LOF as ''unspecified.'' The ''unspecified'' fisheries will be removed from the LOF once those permits have expired, and the permit holder is required to renew the permit under one of the seven authorized fisheries.

The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. Therefore, the seven U.S.-authorized high seas fisheries, exclusive of the ''Pacific (Eastern Tropical) Tuna Fisheries'', are subdivided on the LOF based on gear types (e.g., trawls, longlines, purse seines, gillnets, etc.), as listed on each individual's permit application, to provide more detail on composition of effort within these fisheries.

How Will NMFS Categorize High Seas Fisheries on the LOF?

As discussed in the previous sections of this preamble, commercial fisheries operating within U.S. waters are categorized on the LOF based on the level of mortality and serious injury of marine mammal stocks incidental to commercial fishing as related to the stock's PBR level. PBR levels are calculated based on the stock's abundance using data presented in the SARs. Section 117 of the MMPA (16 U.S.C. 1386) requires NMFS to prepare SARs for marine mammal stocks occurring ''in waters under the jurisdiction of the United States.'' NMFS does not develop SARs or calculate PBR levels for marine mammal stocks on the high seas; therefore, NMFS does not possess the same information to categorize high seas fisheries as is used to categorize fisheries operating within U.S. waters.

NMFS proposes to categorize the majority of high seas fisheries on the LOF as Category II. Category II is the appropriate category for new fisheries for which NMFS does not have adequate information to accurately categorize, unless there is reliable information to categorize it otherwise, or until further information becomes available. Categorizing a fishery as a Category II allows NMFS to place observers on vessels in that fishery, providing NMFS the opportunity to obtain information needed to most accurately catagorize a commercial fishery. For fisheries that operate both within U.S. waters and on the high seas, the fishery will be classified according to its status in U.S. waters. Therefore, for a Category I or Category III fishery within U.S. waters, the high seas component would also be classified as Category I or Category III, accordingly. For example, the ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery'' is a Category I fishery targeting highly migratory species within U.S. waters. Vessels in this fishery regularly cross into the high seas while fishing. Therefore, the high seas ''Atlantic Highly Migratory Species'' longline fishery would also be classified as Category I because it is the same fishery regardless of whether a vessel is fishing within U.S. waters or crosses the boundary into the high seas. Please see below under ''Summary of changes to the LOF for 2009'' for more details. NMFS will continue to gather available information on the authorized high seas fisheries and recategorize fisheries in Table 3, if necessary, as more information becomes available.

How Will NMFS Determine which Species or Stocks to Include as Incidentally Killed or Seriously Injured in a High Seas Fishery?

All serious injury and mortality of marine mammals incidental to commercial fishing operations, both in U.S. waters and on the high seas, must be reported to NMFS. High seas fishers are provided with Marine Mammal Take Reporting Forms to record such incidents. (Very few marine mammal takes by U.S. vessels participating in high seas fisheries, however, have been reported on these forms to date.) Observer programs for fisheries operating within U.S. waters also collect data on the high seas if the vessel should cross into high seas waters. Additionally, some fisheries that operate exclusively on the high seas have formal observer programs that provide data on interactions. In these cases, the MSA, NEPA, or ESA documents supporting the authorization of the seven U.S.-authorized high seas fisheries review observer documented interactions and list the marine mammal species taken in those fisheries. This information is used to identify marine mammals killed/injured in these fisheries in Table 3 on the LOF. For other fisheries without observer data, the MSA, NEPA, and ESA documents supporting the authorization of the seven U.S.-authorized high seas fisheries present information on marine mammal interactions from anecdotal and other reports, which do not always specify the marine mammal species involved in the interactions. Therefore, marine mammal species killed or injured in the high seas fisheries without observer data that are listed in Table 3 would be designated as ''undetermined'' until additional information on marine mammal populations and fishery interactions on the high seas become available.

For high seas fisheries with an associated fishery operating within U.S. waters, as discussed above, Table 3 would list the same marine mammal species killed or injured (excluding coastal species that would not be found on the high seas) as those killed or injured by that fishery operating within U.S. waters. For example, the ''CA/OR thresher shark/swordfish drift gillnet (≥14 in, mesh)'' lists Risso's dolphins as killed or injured in the fishery operating within U.S. waters. This species occurs both within U.S. waters and the adjacent high seas and vessels in this fishery often cross into the high seas to fish. NMFS assumes that these vessels pose the same risk to the species on both sides of the EEZ boundary. Therefore, NMFS will also list Risso's dolphins under the high seas component of this fishery, the ''Pacific Highly Migratory Species'' drift gillnet fishery. NMFS will add and delete

species from the LOF as additional information becomes available.

Am I Required to Register Under the MMPA?

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

NMFS has integrated the MMPA registration process, the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for all Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and NMFS will issue vessel or gear owners an authorization certificate. Participants in these fisheries are not required to submit registration or renewal materials directly under the MMAP. The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries. Individuals fishing in Category I and II fisheries for which no state or Federal permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

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

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

1. Northeast Region vessel or gear owners participating in Category I or II fisheries for which a state or Federal permit is required may receive their authorization certificate and/or injury/mortality reporting form by contacting the Northeast Regional Office at 978–281–9300 x6505 or by visiting the Northeast Regional Office Web site (*http://www.nero.noaa.gov/prot_res/*) and following instructions for printing the necessary documents.

2. Southeast Region vessel or gear owners participating in Category I or II fisheries for which a Federal permit is required, as well as fisheries permitted by the states of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas may receive their authorization certificate and/or injury/mortality reporting form by contacting the Southeast Regional Office at 727–824–5312 or by visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/pr/pr.htm*) and following instructions for printing the necessary documents.

How Do I Renew My Registration Under the MMPA?

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

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

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

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. Injury/mortality reporting forms and instructions for submitting forms to NMFS can be downloaded from: *http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf*. Reporting requirements and procedures can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

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

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

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans. Refer to Table 4 in this document for a list of fisheries affected by take reduction teams and plans. Take reduction plan regulations can be found at 50 CFR 229.30–35.

Sources of Information Reviewed for the Proposed 2009 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the SARs for all observed fisheries to determine whether changes in fishery classification were warranted. NMFS' SARs are based on the best scientific information available at the time of preparation, including the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, fishery management plans, ESA documents,

and other information that may not be included in the SARs.

The proposed LOF for 2009 was based, among other things, on information provided in the NEPA and ESA documents analyzing authorized high seas fisheries, and the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), the final SARs for 2002 (68 FR 17920, April 14, 2003), the final SARs for 2003 (69 FR 54262, September 8, 2004), the final SARs for 2004 (70 FR 35397, June 20, 2005), the final SARs for 2005 (71 FR 26340, May 4, 2006), the final SARs for 2006 (72 FR 12774, March 19, 2007), the final SARs for 2007 (73 FR 21111, April 18, 2008), and the draft SARs for 2008. All the SARs are available at: *http://www.nmfs.noaa.gov/pr/sars/*.

Fishery Descriptions

NMFS described each Category I and II fishery on the LOF for 2008 in the final 2008 LOF (72 FR 66048, November 27, 2007). Below, NMFS briefly describes each fishery listed as a Category I or II fishery appearing on the LOF for the first time. Additional details for Category I and II fisheries operating in U.S. waters are included in the SARs, Fishery Management Plans (FMPs), and Take Reduction Plans (TRPs), or through state agencies. Additional details for Category I and II fisheries operating on the high seas are included in various FMPs, NEPA, or ESA documents.

High Seas Atlantic Highly Migratory Species Fisheries

The Atlantic Highly Migratory Species (HMS) high seas fisheries are similar to fisheries targeting Atlantic HMS within U.S. waters, but primarily use pelagic longline gear. Atlantic swordfish and bigeye tuna are the primary target species on the high seas, with Atlantic yellowfin, albacore and skipjack tunas, and pelagic and some deepwater sharks also caught and retained for sale. Bluefin tuna are caught incidental to pelagic longline operations, both on the high seas and within U.S. waters, and may be retained subject to specific target catch requirements.

Within U.S. waters, HMS commercial fishers use several gear types. Authorized gear for tuna include speargun (except when targeting bluefin), rod and reel, handlines, bandit gear, harpoon, pelagic longline, trap (pound net and fish weir), and purse seine. Purse seines used to target bluefin tuna must have a mesh size of less than or equal to 4.5 in (11.4 cm) and at least 24–count thread throughout the net. Only rod and reel gear may be used to target billfish and commercial possession of Atlantic billfish is prohibited. Authorized gear for sharks includes rod and reel, handline, bandit gear, longline, and gillnet. Gillnets must be less than or equal to 2.5 km (1.6 mi) in length. Authorized gear for swordfish includes handline, handgear (including buoy gear), and longline for north Atlantic swordfish, and longline for south Atlantic swordfish. North Atlantic swordfish incidentally taken in squid trawls may be retained. The fishery management area for Atlantic HMS includes U.S. waters and the adjacent high seas.

Atlantic HMS are managed under regulations implementing the Consolidated Atlantic HMS FMP (2006), under the authority of the MSA and the Atlantic Tunas Convention Act (ATCA). Regulations issued under the MSA address the target fish species, as well as bycatch of species protected by the ESA, MMPA, and Migratory Bird Treaty Act. The MSA regulations (50 CFR part 635) require vessel owners and operators targeting Atlantic HMS with longline or gillnet gear to complete protected species (sea turtles and marine mammals) safe handling, release, and identification workshops. The regulations also require shark dealers to complete an Atlantic shark identification workshop.

The high seas components of Atlantic HMS fisheries are extensions of various Category I II, and III fisheries operating in U.S. waters (Tables 1 and 2). The longline fishery targeting Atlantic HMS in U.S. waters is the Category I, ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery.'' NMFS is currently developing regulations to implement the Pelagic Longline Take Reduction Plan (PLTRP) for this fishery. The gillnet fishery targeting Atlantic HMS in U.S. waters is the Category II, ''Southeastern U.S. Atlantic shark gillnet'' fishery. This fishery is subject to the Bottlenose Dolphin TRP (BDTRP) (50 CFR 229.35), for coastal gillnetting only, and the Atlantic Large Whale TRP (ALWTRP) (50 CFR 229.32). The purse seine fishery targeting Atlantic HMS in U.S. waters is the Category III, ''Atlantic tuna purse seine fishery.''

For more information on the Atlantic HMS fisheries and details on the management and regulations of these fisheries, please see the Consolidated Atlantic HMS FMP (*http://www.nmfs.noaa.gov/sfa/hms/hmsdocument_files/FMPs.htm*) and the regulations for Atlantic HMS fisheries in 50 CFR part 635.

High Seas Pacific Highly Migratory Species Fisheries

The Pacific HMS high seas fisheries are virtually the same as fisheries targeting Pacific HMS within U.S. waters. Pacific HMS fisheries target tunas (North Pacific albacore, yellowfin, bigeye, skipjack, and bluefin), billfish (striped marlin), sharks (common thresher, pelagic thresher, bigeye thresher, shortfin mako, and blue), swordfish, and dorado (i.e., dolphinfish) using several gear types. Authorized gear include surface hook-and-line (including troll, rod and reel, handline, albacore jig, and live bait), harpoon (non-mechanical), drift gillnet (14 in (35.5 cm) stretch mesh or greater), pelagic longline, and purse seine (including ring, drum, and lampara nets). Pacific HMS incidentally caught by unauthorized gear may be landed under certain circumstances. Species prohibited in Pacific HMS fisheries include any salmon species, great white shark, basking shark, megamouth shark, and Pacific halibut. The fishery management area for Pacific HMS covers U.S. waters from the U.S.-Mexico border to the U.S.- Canada border, and the adjacent high seas.

Pacific HMS are managed under regulations implementing the FMP for U.S. West Coast Fisheries for HMS, adopted in April 2004. The MSA regulations (50 CFR part 660, subpart K) address the target fish species as well as species protected by the ESA and MMPA. The MSA regulations lay out multiple restrictions for fishing for Pacific HMS with longline gear. Vessels fishing longline gear may not target HMS within U.S. waters. Targeting swordfish with shallow set longline gear or possessing a light stick on board the vessel west of 150° W. long. and north of the equator is prohibited. From April 1–May 31, longline gear is prohibited in the area bounded on the south by the equator, north by 15° N. lat., east by 145° W. long., and west by 180° long. Longline vessels must have a valid protected species workshop certificate onboard, along with safe handling and release tools for sea turtles and seabirds.

Along with the MSA requirements, including area closures for marine mammal and sea turtle protection, drift gillnet fishing for Pacific HMS is managed under the MMPA through the Pacific Offshore Cetacean Take Reduction Plan (POCTRP) (50 CFR 229.31). The POCTRP regulations require multiple gear modifications during the May 1–January 31 fishing season, including a requirement that all extenders (buoy lines) be at least 6 fathoms (36 ft; 10.9 m) in length, all

floatlines be fished at a minimum of 36 ft (10.9 m) below the surface, all nets have operational pingers to a water depth of a least 100 fathoms (600 ft; 182.9 m). Also, all drift gillnet vessel operators must attend skipper education workshops before each fishing season.

The high seas components of Pacific HMS fisheries are extensions of various Category I, II, and III fisheries operating within U.S. waters (Tables 1 and 2). The drift gillnet fishery targeting Pacific HMS, the Category I ''CA/OR thresher shark/swordfish drift gillnet (≥14in. mesh) fishery,'' is managed under the POCTRP. The purse seine fishery targeting Pacific HMS within U.S. waters is the Category II ''CA tuna purse seine fishery.'' While longline fishing for Pacific HMS is prohibited within U.S. waters, the LOF includes the Category II ''CA pelagic longline fishery'' to account for swordfish caught outside U.S. waters, but landed into the U.S. West coast. The troll fishery targeting Pacific HMS is an extension of U.S. waters Category III ''AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.''

For more information on the Pacific HMS fisheries and details on the management and regulations of these fisheries, please see the Pacific HMS FMP (*http://www.pcouncil.org/hms/hmsfmp.html#final*), the Pacific HMS FMP Biological Opinion (BiOp) (*http://swr.nmfs.noaa.gov/HMS__FMP__Opinion__Final.pdf*), and the regulations for Pacific HMS in 50 CFR part 660, subpart K.

High Seas Western Pacific Pelagic Fisheries

The Western Pacific pelagic high seas fisheries are virtually the same as fisheries targeting Wester Pacific pelagic species in U.S. waters. Western Pacific pelagic fisheries target tunas (albacore, bigeye, yellowfin, bluefin, and skipjack), billfish (Indo-Pacific blue marlin, black marlin, striped marlin, shortbill spearfish), sharks (pelagic thresher, bigeye thresher, common thresher, silky, oceanic whitetip, blue, shortfin mako, longfin mako, and salmon), swordfish, sailfish, wahoo, kawakawa, moonfish, pomfret, oilfish, and other tuna relatives. The main gears used to fish in the Western Pacific Pelagic fisheries are pelagic longline, troll, and handline. The Western Pacific Pelagic fisheries take place in the Western Pacific Fishery Management Area (including waters shoreward of the EEZ boundary around American Samoa, Guam, Hawaii, the Northern Mariana Islands, Midway, Johnston and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands) and the adjacent high seas waters.

Western Pacific Pelagic fisheries are managed under regulations implementing the FMP for the Pelagic Fisheries of the Western Pacific Region developed by the Western Pacific Fishery Management Council (WPFMC). The MSA regulations (50 CFR part 665, subpart C) address target fish species as well as bycatch of species protected under the ESA, MMPA, and Migratory Bird Treaty Act. The MSA regulations outline restrictions on effort, observer coverage requirements, longline fishing prohibited areas, sea turtle and seabird bycatch mitigation measures, annual fleetwide limits on interactions with leatherback and loggerhead sea turtles, and a requirement for owners of longline vessels to participate in annual protected species workshops. Drift gillnet fishing in the fishery management area is prohibited, except where authorized by an experimental fishery permit.

The high seas components of the Western Pacific Pelagic longline fishery are extensions of the Category I ''HI deep-set (tuna target) longline/set line fishery'' and the Category II ''HI shallow-set (swordfish target) longline/set line fishery'' (proposed to be split into two fisheries from the ''HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery'' in this proposed rule) operating within U.S. waters. All requirements for vessels fishing longline gear within U.S. waters remain effective in high seas waters (as described in the above paragraph).

For more information on the Western Pacific Pelagic fisheries and details on the management and regulations of these fisheries, please see the Western Pacific Pelagic FMP BiOp (*http://www.fpir.noaa.gov/Library/PUBDOCs/*), the Western Pacific Pelagic FMP Environmental Impact Statement (EIS) (*http://www.fpir.noaa.gov/Library/PUBDOCs/*), and the regulations for Western Pacific Pelagic fisheries in 50 CFR 665, Subpart C.

High Seas South Pacific Albacore Troll Fisheries

The South Pacific albacore troll high seas fisheries target South Pacific albacore using mostly longline or troll gear in waters solely outside of any nation's EEZ. Longline gear, set with 1,000 or more hooks suspended from a horizontally buoyed mainline several miles long, accounts for 86 percent of the catch. Trolling vessels (including jigs or live bait) attach 10–20 fishing lines of various lengths to the vessel's outriggers on a slow-moving boat (5–6 knots). The total U.S. catch of South Pacific albacore has accounted for less than 5 percent of the total international catch in recent years.

U.S. vessels fish in the South Pacific albacore fishery from November/December-April. Many vessels then participate in the larger North Pacific albacore fishery from April-October. South Pacific albacore fishing occurs outside any nation's EEZ in an area bounded by approximately 110° W. long. and 180° W. long., and by 25° S. lat. and 45° S. lat. Most U.S. troll vessels depart from the U.S. West Coast or Hawaii and unload in American Samoa, Fiji, or Tahiti.

The South Pacific albacore troll fishery is not managed by regulations implementing any FMP. The WPFMC has concluded, and NMFS agrees, that conservation and management measures for this fishery are not warranted as the stock in not overfished and there are no known protected species interactions. Sea turtles and marine mammals do not prey on the bait species used by these vessels and vessels are typically slow-moving and would therefore likely able to avoid a collision with a whale. As of 2001, the HSFCA requires U.S. albacore troll vessel operators to file logbooks with NMFS for fishing in the South Pacific.

For more information on the South Pacific albacore troll fishery, please see the 2004 U.S. South Pacific albacore troll fishery Environmental Assessment (EA) (*http://www.fpir.noaa.gov/Library/PUBDOCs/*). There are no regulations governing these fisheries.

High Seas South Pacific Tuna Fisheries

The South Pacific Tuna Treaty (SPTT) manages access of U.S. purse seine vessels targeting tuna (skipjack and yellowfin) within the EEZs of 16 Pacific Island Countries in the Western and Central Pacific Ocean that are party to the Treaty. The SPTT Area includes the waters from north of 60° S. lat. and east of 90° E. long. subject to the fishing jurisdiction of Pacific Island parties, and all waters within rhumb lines connecting multiple geographic coordinates, and north along the 152° E. long. out to Australia's EEZ border. The Treaty Area includes portions of waters in the EEZs of most of the Pacific Island Countries included in the Treaty. The SPTT is intended to apply only to U.S. purse seine vessels; however, provisions have been made to accommodate high seas fishing by U.S. albacore tuna troll and U.S. longline vessels within the Treaty Area. Both a SPTT and a HSFCA permit are required to fish in SPTT waters.

Under the SPTT, observers are recruited from the Pacific Island Countries and then trained and deployed by the Forum Fisheries Agency (FFA) in Honiara in the Solomon Islands. Many of the FFA deployed observers serve in and have experience from domestic observer programs active in each observer's respective country. The target observer level coverage is 20 percent of U.S. purse seine vessels, the full costs of which are the responsibility of the U.S. purse seine vessel owners. Observers collect a range of data, including a form for recording information on interactions with seabirds, sea turtles, marine mammals, and sharks. Fishery observers undergo training in species identification for target and bycatch species; however, marine mammal species identification has only recently been placed as a priority matter for reporting. Observer data from January 1997–June 2002 show that 11 sets resulted in interactions with marine mammals. However, the data indicate only that the animals were ''unidentified whales, marine mammals, or dolphin/porpoise.'' The International Fisheries Division in the NMFS Pacific Islands Region is working with the FFA observer program to better train observers in marine mammal identification.

For additional information on the South Pacific Tuna Treaty and details on the management and regulations of these fisheries, see the South Pacific Tuna Treaty EA (*http://www.fpir.noaa.gov/Library/PUBDOCs/*) and the regulations for the South Pacific Tuna Treaty in 50 CFR 300, subpart D.

High Seas Antarctic Living Marine Resources Fisheries

The Commission for the Conservation of Antarctic Marine Living Resources (Convention or CCAMLR) conserves and manages Antarctic marine living resources (AMLR) in waters surrounding Antarctica. The Convention applies to AMLR in the waters from 60° S. lat. south to the Antarctic Convergence, with limited exceptions, covering 32.9 million square kilometers. Both an AMLR and a HSFCA permit are required to fish in CCAMLR waters. There are multiple gear types used to target multiple species in the Convention Area. Gear types include pelagic and bottom trawl, trap/pot, gillnet, and longline. Target species include krill and Antarctic finfish (rockcod species, toothfish species, icefish species, silverfish, cod, and lanternfish), mollusks, and crustaceans. CCAMLR Conservation Measures require or recommend several measures for fisheries in the Convention area. Mandatory measures include requirements for reporting; operating a Vessel Monitoring System while in the Convention area; longline gear modifications to reduce seabird interactions; mesh sizes restrictions for trawl gear. Recommendations include seal bycatch mitigation measures, such as a seal excluder device.

CCAMLR has identified two types of scientifically trained observers to collect information required in CCAMLR-managed fisheries, including information on entanglements and incidental mortality of seabirds and marine mammals. The first type of observer is a ''national observer,≥such as a U.S. observer placed on a U.S. vessel by the U.S. Government. The second type of observer is an ''international observer,'' or an observer operating in accordance with bilateral arrangements between the Nation whose vessel is fishing and the nation providing the observer. CCAMLR Conservation measures require all fishing vessels in the Convention area (except vessels fishing for krill) to carry at least one international observer and, where possible, an additional observer. The United States requires all of its vessels fishing in the CCAMLR area, for any target species and with any gear, to carry an observer. In certain exploratory toothfish fisheries, the vessel must carry two observers, with at least one being an international observer.

For additional information on the fishing activities in the CCAMLR region and details on the management and regulations of these fisheries, see the CCAMLR Programmatic EIS http://www.nmfs.noaa.gov/sfa/domes__fish/news__of__note.htm#ccamlr), the CCAMLR Schedule of Conservation Measures in Force (http://www.ccamlr.org), and the regulations for the harvesting of AMLR in 50 CFR 300, subpart D.

CA spot prawn pot

The ''CA spot prawn pot fishery'' (proposed to be listed as a Category II in this rule) operates from Central CA southward to the Mexican border. Strings of 10–50 oblong cylindrical traps are commonly fished at depths usually greater than 100 fathoms. This is a limited access fishery managed by the state of CA. A tiered permit system has been implemented allowing a maximum of 150 or 500 traps to be fished at one time depending on the fishing history associated with the permit. A maximum of 300 traps may be located within state waters (inside 3 miles), regardless of permit tier. North of Point Arguello, the season is open from August 1–April 30. South of Point Arguello, the season runs from February 1–October 30.

CA Dungeness crab pot

The ''CA Dungeness crab pot fishery'' (proposed to be listed as a Category II in this rule) operates along the central and northern coastal waters of CA in depths typically from 10–40 fathoms. The cylindrical or rectangular pots used in the fishery are buoyed, or fished, individually, although fishing strings of multiple traps are allowed in the central region. There is no limit on the number of traps which may operated by a fisherman at one time. This is a limited access fishery managed in part by the State of California and the Tri-State Committee agreement for Dungeness crab, which also includes the states of OR and WA. The fishery is divided into two management areas. The central region (south of the Mendocino-Sonoma county line) is open November 15–June 30. The northern region (north of the Mendocino-Sonoma county line) can open on December 1, but may be delayed by the California Department of Fish and Game (CDFG) based on the condition of market crabs, and continues until July 15.

OR Dungeness crab pot

The ''OR Dungeness crab pot fishery'' (proposed to be listed as a Category II in this rule) operates along the coastal waters of OR in depths typically from 10–40 fathoms. This is a limited access fishery managed by the OR Department of Fish and Wildlife (ODFW) in conjunction with the Tri-State Committee agreement for Dungeness crab, which also includes the states of CA and WA. The Dungeness crab season runs from December 1–August 14, although the state may delay the opening based on the condition of the crabs. Additionally, the state may close the season after the end of May if catch rates are still high to protect molting crab. A three-tiered pot limitation system has been implemented allowing a maximum 200, 300, or 500 pots to be fished at once depending on previous landing history. Logbook reporting of effort and catch data to the state is now required. The cylindrical or rectangular pots used in the fishery are fished individually by law.

WA/OR/CA sablefish pot

The ''CA/OR/WA sablefish pot fishery'' (proposed to be listed as a Category II in this rule) sets gear in waters past the 100 fathom curve off the West coast of the U.S. In CA, gear is set outside 150 fathoms, with an average depth of 190 fathoms. There are two separate trap fisheries, open access and

limited entry, and both have quotas. Open access fishers will usually fish 1 to 8 strings of 3–4 pots, each with a float line and buoy stick. The gear sometimes soaks for long periods. Fishers in the limited entry fishery will normally fish 20–30 pot strings. The fishery operates year round and effort varies from southern CA to the Canadian border.

This fishery is managed under regulations implementing the West Coast Groundfish FMP developed by Pacific Fishery Management Council. Access to the limited entry fishery is granted under a limited entry permit system, in addition to gear endorsements required by the individual states. Open access privileges are currently available to any fisherman with the requisite state gear endorsement, but involve much more restrictive limitations in catch quotas and additional area closures than the primary limited entry permit. Open access quotas vary based upon the area being fished. The limited entry fishery is open from April 1–October 31, while open access is available year-round. Limited entry permits are tiered based on the annual cumulative landings allowed by each permit. Permits are transferable, but the tier category remains fixed. Up to three limited entry permits may be stacked on a single vessel. As with most pot gear fished out in deeper waters, sablefish traps are set in strings of multiple traps.

Summary of Changes to the LOF for 2009

The following summarizes changes to the LOF for 2009 in fishery classification, fisheries listed in the LOF, the number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery. The classifications and definitions of U.S. commercial fisheries for 2009 are identical to those provided in the LOF for 2008 with the proposed changes discussed below. State abbreviations used in the following paragraphs include: AK (Alaska), AL (Alabama), CA (California), DE (Delaware), FL (Florida), GA (Georgia), HI (Hawaii), LA (Louisiana), MA (Massachusetts), ME (Maine), MS (Mississippi), NC (North Carolina), NJ (New Jersey), NY (New York), OR (Oregon), RI (Rhode Island), SC (South Carolina), TX (Texas), VA (Virginia), and WA (Washington).

Commercial Fisheries on the High Seas

NMFS proposes to add high seas fisheries to the LOF, beginning with the 2009 LOF. NMFS is soliciting public comments on the proposed process for including high seas fisheries on the LOF (presented in the preamble under the section ''Are high seas fisheries included on the LOF?''), the fishery descriptions for the authorized high seas fisheries (presented in the preamble under the section ''Fishery descriptions''), and the proposed fishery additions described below.

Addition of Fisheries to the LOF

High Seas Atlantic Highly Migratory Species Fisheries

NMFS proposes to add the U.S.-authorized high seas Atlantic HMS fisheries to the LOF. The Atlantic HMS high seas fisheries include all fisheries using multiple gear types to target Atlantic HMS (described in the ''Fishery Descriptions'' section in the preamble of this proposed rule). Due to the lack of specific information on marine mammal abundance and marine mammal-fishery interactions on the high seas, NMFS proposes to categorize all fisheries targeting Atlantic HMS on the high seas with gear other than longline and purse seine (e.g., gillnet, trawl, handline, and troll gear) as Category II. Category II is the appropriate classification for new fisheries on the LOF for which there is little information on which to base classification. NMFS proposes to categorize the longline component of this fishery as a Category I because it is an extension of the Category I ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline'' fishery operating within U.S. waters. The gear used, fishing methods, and target species are the same, and longline vessels targeting Atlantic HMS regularly cross into the high seas, and back, when fishing. NMFS proposes to categorize the purse seine component of this fishery as a Category III because it is an extension of the Category III ''U.S. Atlantic tuna purse seine fishery'' operating within U.S. waters. There are 88 valid HSFCA permits for fishers targeting Atlantic HMS on the high seas with all gear types. As noted in the preamble, the number of valid permits may not accurately account for annual fishing effort on the high seas. Please see the discussion on the HSFCA permitting process under the section ''Are high seas fisheries included on the LOF?'' in the preamble of this proposed rule for additional details.

Many marine mammal species interacting with Atlantic HMS fisheries operating in U.S. waters also inhabit the high seas. Observer coverage for the Category I pelagic longline fishery extends into the high seas, so information is available on which marine mammal stocks are incidentally taken by this fishery on the high seas. For this reason, NMFS proposes to list the marine mammal species that have been documented killed or injured in the Category I high seas longline component of Atlantic HMS fisheries in Table 3.

Similar observer data are not available for the high seas Atlantic HMS drift gillnet fishery, which is an extension of the Category II ''Southeastern U.S. Atlantic shark gillnet fishery''; or the purse seine fishery, which is an extension of the Category III ''Atlantic tuna purse seine fishery.'' For those fisheries where no interaction data (observer or other data) exist on the high seas, NMFS proposes to list all the non-coastal marine mammal species/stocks killed or injured in the portion of the fishery that operates in U.S. waters as injured or killed in the same fishery operating on the high seas in Table 3. Specifically, NMFS proposes to add all non-coastal marine mammal species killed or injured in the Category II ''Southeastern U.S. Atlantic shark gillnet fishery'' (operating within U.S. waters) as injured or killed in the Category II drift gillnet component of the Atlantic HMS fisheries (operating on the high seas). Also, NMFS proposes to list all non-coastal marine mammal species killed or injured in the Category III purse seine component of the Atlantic HMS fisheries (operating within U.S. waters) as injured or killed in the Category III ''Atlantic tuna purse seine fishery'' (operating on the high seas).

There is little information on interactions between marine mammals and fishing gear used to target Atlantic HMS on the high seas, other than that listed in the previous paragraphs. Given the lack of data on marine mammal abundance and interactions with high seas Atlantic HMS fisheries (excluding the longline, drift gillnet, and purse seine components), NMFS proposes to list the marine mammal species killed or injured in these fisheries as ''undetermined'' in Table 3.

High Seas Pacific Highly Migratory Species Fisheries

NMFS proposes to add the U.S.-authorized high seas Pacific HMS fisheries to the LOF. The Pacific HMS fisheries include all fisheries using multiple gear types to target Pacific HMS (described in the ''Fishery Descriptions'' section in the preamble of this proposed rule). Due to the lack of specific information on marine mammal abundance and interactions with Pacific HMS high seas fisheries, NMFS proposes to categorize all fisheries targeting Pacific HMS on the high seas with gear other than drift gillnet and

troll (e.g., longline, gillnet, trawl, purse seine, and handline gear) as Category II. Category II is the appropriate classification for new fisheries on the LOF for which there is little information on which to base classification as described in the definition for ''Category II'' in 50 CFR 229.2. NMFS proposes to categorize the drift gillnet component of this fishery as a Category I because it is an extension of the Category I ''CA/OR thresher shark/swordfish drift gillnet (≥14 in. mesh) fishery'' operating within U.S. waters. The gear used, fishing methods, and target species are the same in U.S. waters and on the high seas. Similarly, NMFS proposes to categorize the troll component of this fishery as a Category III because it is an extension of the Category III ''AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries'' operating within U.S. waters.

There are 344 valid HSFCA permits for fishers targeting Pacific HMS on the high seas using all gear types. As noted in the preamble, the number of valid permits may not accurately account for annual fishing effort on the high seas. Please see the discussion on the HSFCA permitting process under the section ''Are high seas fisheries included on the LOF?'' in the preamble of this proposed rule for additional details.

Many marine mammal species interacting with Pacific HMS fisheries operating in U.S. waters also inhabit the high seas. Thus, fishing vessels that cross into the high seas are also likely to interact with these marine mammals once they cross into the high seas. For those fisheries where no interaction data (observer or other data) exist on the high seas, NMFS proposes to list all the non-coastal marine mammal species/stocks killed or injured in the portion of the fishery that operates in U.S. waters as injured or killed in the same fishery operating on the high seas in Table 3.

NMFS proposes to add all non-coastal marine mammal species killed or injured in the Category I ''CA/OR thresher shark/swordfish drift gillnet (>14 in mesh) fishery'' (operating within U.S. waters) as injured or killed in the associated drift gillnet component of Pacific HMS fisheries (operating on the high seas).

NMFS proposes to add all non-coastal marine mammal species killed or injured in the Category II ''CA tuna purse seine fishery'' (operating within U.S. waters) as injured or killed in the associated purse seine component of the Pacific HMS fisheries (operating on the high seas).

NMFS proposes to list all marine mammal species killed or injured in the Category II ''CA pelagic longline fishery'' as injured or killed in the associated longline component of the Pacific HMS fisheries (operating on the high seas). This fishery is currently prohibited within U.S. waters, but remains listed on Table 1 because catch is landed on the U.S. West coast. Therefore, the marine mammal species listed as killed or injured in this fishery were observed taken on the high seas.

There is little information on interactions between marine mammals and fishing gear used to target Pacific HMS on the high seas, other than that listed in the previous paragraphs. Given the lack of data on marine mammal abundance and interactions with high seas Pacific HMS fisheries (excluding the longline, drift gillnet, and purse seine components), NMFS proposes to list the marine mammal species killed or injured in these fisheries as ''undetermined'' in Table 3.

High Seas Western Pacific Pelagic Fisheries

NMFS proposes to add the U.S.-authorized high seas Western Pacific pelagic fisheries to the LOF. The Western Pacific pelagic fisheries include all fisheries using multiple gear types to target Western Pacific pelagic species (described in the ''Fishery Descriptions'' section in the preamble of this proposed rule). Due to the lack of specific information on marine mammal abundance and interactions with fisheries on the high seas, NMFS proposes to categorize all fisheries targeting Western Pacific pelagic species on the high seas with gear other than longline (e.g., trawl, purse seine, pot, handline, and troll gear) as Category II. Category II is the appropriate classification for new fisheries on the LOF for which there is little information on which to base classification, as described in the definition for ''Category II'' in 50 CFR 229.2. NMFS proposes to categorize the deep-set longline component of this fishery in U.S. waters as Category I, and the shallow-set longline component of this fishery in U.S. waters as Category II, because they are extensions of the Category I '' HI deep-set (tuna target) longline/set line fishery'' and the Category II ''HI shallow-set (swordfish target) longline/set line fishery,'' respectively. (The ''HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery'' is proposed to be split into these two fisheries in this proposed rule, as stated below). The gear used, fishing methods, and target species are the same, and longline vessels targeting Western Pacific pelagic species regularly cross over into the high seas when fishing.

There are 219 valid HSFCA permits for fishers targeting Western Pacific pelagic species with all gear types on the high seas. As noted in the preamble, the number of valid permits may not accurately account for annual fishing effort on the high seas. Please see the discussion on the HSFCA permitting process under the section ''Are high seas fisheries included on the LOF?'' in the preamble of this proposed rule for additional details.

Many marine mammal species are also found on the high seas and the Western Pacific pelagic fishery operates the same on both sides of the EEZ boundary. Fishing vessels that cross into the high seas are likely to also interact with these marine mammal stocks once they cross the EEZ boundary. For those fisheries where no interaction data (observer or other data) exist on the high seas, NMFS proposes to list all the non-coastal marine mammal species/stocks killed or injured in the portion of the fishery that operates in U.S. waters as injured or killed in the same fishery operating on the high seas in Table 3.

NMFS proposes to add all non-coastal marine mammal species killed or injured in the Category I ''HI deep-set (tuna target) longline/set line fishery'' (operating within U.S. waters) as injured or killed in the Category I ''Western Pacific Pelagic fishery (deep-set component)'' (operating on the high seas).

NMFS proposes to add all non-coastal marine mammal species killed or injured in the Category II ''HI shallow-set (swordfish target) longline/set line fishery'' (operating within U.S. waters) as injured or killed in the Category II ''Western Pacific Pelagic fishery (shallow-set component)'' (operating on the high seas).

There is little information on interactions between marine mammals and fishing gear used to target Western Pacific pelagic species on the high seas, other than that listed in the previous paragraphs. Given the lack of data on marine mammal abundance and interactions with high seas Western Pacific pelagic fisheries (excluding longline effort), NMFS proposes to list the marine mammal species killed or injured in these fisheries as ''undetermined'' in Table 3.

High Seas South Pacific Albacore Troll Fisheries

NMFS proposes to add the high seas South Pacific albacore troll fisheries to the LOF. While the main gear types used are troll and longline, the South Pacific albacore troll fisheries include

all fisheries using multiple gear types to target South Pacific albacore tuna. While marine mammals are unlikely to be injured or killed in troll gear because of the nature of trolling methods and the bait used (South Pacific Albacore Troll EA), there is no official observer program for this fishery. Therefore, NMFS proposes to categorize all fisheries targeting South Pacific albacore on the high seas with trawl, purse seine, pot, longline, handline, and troll gear as Category II (the appropriate classification for new fisheries on the LOF for which there is little information on which to base classification). There are 83 valid HSFCA permits for vessels participating in the South Pacific albacore troll fisheries on the high seas with all gear types. As noted in the preamble, the number of valid permits may not accurately account for annual fishing effort on the high seas. Please see the discussion on the HSFCA permitting process under the section ''Are high seas fisheries included on the LOF?'' in the preamble of this proposed rule for additional details.

There are no records of incidental mortality or serious injury of marine mammals in the South Pacific albacore troll fisheries. While there is little indication of marine mammal interactions with South Pacific albacore troll fishing, NMFS proposes to list the marine mammal species killed or injured in these fisheries as ''undetermined'' in Table 3 due to the lack of an observer program covering these fisheries.

High Seas South Pacific Tuna Fisheries

NMFS proposes to add the high seas South Pacific tuna fisheries, as authorized under the South Pacific Tuna Treaty, to the LOF. While a formal observer program exists for fishing in the Treaty area, information on marine mammal stock abundance in the area is scarce and observer reports of fishery interactions are not yet specific enough to determine the level of marine mammal serious injury and mortality. Therefore, NMFS proposes to categorize all fisheries participating in the South Pacific tuna fishery as Category II (the appropriate classification for new fisheries on the LOF for which there is little information on which to base classification). There are 26 valid HSFCA permits for vessels participating in the South Pacific tuna fishery. This number is considered to accurately reflect the effort by U.S. vessels in the SPTT area because it closely matches the number of U.S. vessels with a valid SPTT license.

Under the SPTT, U.S. purse seine vessels are observed with a target of 20 percent coverage. While observer data document interactions with marine mammals, the data only currently identify the animals as unidentified whales, marine mammals, or dolphin/porpoise. For this reason, Table 3 lists the marine mammal species killed/injured in these fisheries as ''undetermined.''

High Seas Antarctic Living Marine Resources Fisheries

NMFS proposes to add the high seas Antarctic Living Marine Resources (or CCAMLR) fisheries to the LOF. The CCAMLR fisheries include all fisheries using multiple gear types to target living marine resources in the CCAMLR region (described in the ''Fishery Descriptions'' section in the preamble of this proposed rule). While a formal observer program exists for fishing under CCAMLR, specific information on marine mammal abundance and fishery interactions levels has not been calculated in the manner necessary to categorize the fisheries based on a marine mammal stock's PBR (as described in the preamble). Therefore, NMFS proposes to categorize all fisheries operating in the CCAMLR region as Category II (the appropriate classification for new fisheries on the LOF for which there is little information on which to base classification). There are no valid HSFCA permits for vessels participating in the CCAMLR fisheries for the 2008 fishing season, which accurately reflects effort by U.S. vessels in the CCAMLR area. Therefore, CCAMLR fisheries do not appear on Table 3 (Commercial Fisheries on the High Seas) in this proposed rule. When a HSFCA permit is requested and granted for a U.S. vessel to participate in the CCAMLR fisheries, this information will appear in Table 3 of the LOF.

In fishing seasons prior to 2004, Antarctic fur seals have been observed incidentally injured and killed by U.S. vessels in the CCAMLR trawl fishery for krill. These takes were drastically reduced in the 2004/2005 fishing season due to a requirement to include a seal excluder device on all trawls (CCAMLR EA). Due to the large population size of Antarctic fur seals, the current low rate of serious injury and mortality is likely not a conservation risk. There are no documented interactions between other marine mammal species and U.S. vessels when using other gear types in the CCAMLR region.

Commercial Fisheries in the Pacific Ocean

Fishery Classification

HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery

NMFS proposes to split the Category I ''HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery'' (hereinafter the current HI-based longline fishery) and list it in the 2009 LOF as two separately managed commercial fisheries: (1) The ''HI deep-set (tuna target) longline/set line fishery≥; and (2) the ''HI shallow-set (swordfish target) longline/set line fishery.'' NMFS believes such a split is warranted because the shallow-set and deep-set fisheries have different target species, operating patterns, management regimes, and marine mammal interaction rates. See the Fishery Descriptions section in the Final 2008 LOF for additional information (72 FR 66048; November 27, 2007). NMFS has split other fisheries in prior LOFs based upon similar factors.

The current HI-based longline fishery is listed as a Category I fishery as a result of the fishery's serious injuries or mortalities to false killer whales (*Pseudorca crassidens*), which currently exceed the stock's PBR. NMFS proposes that splitting the current HI-based longline fishery into two fisheries for purposes of the LOF would result in a Category I deep-set fishery and a Category II shallow-set fishery. The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2) and in the preamble of this proposed rule.

The ''HI deep-set (tuna target) longline/set line fishery'' will remain a Category I fishery because the fishery's serious injuries or mortalities to false killer whales currently exceed the stock's PBR. Observer coverage in the deep-set fishery is approximately 20 percent annually.

The ''HI shallow-set (swordfish target) longline/set line fishery'' was closed from 2001 to 2004. Since 2004, this fishery has been subject to strict management measures including: prescribed use of large circle hooks and fish bait, restricted annual effort, annual limits on turtle captures, and 100–percent onboard observer coverage because of sea turtle interactions. NMFS considered data from 2004 to 2007 in the tier analysis, which takes into account operation of the shallow-set fishery under this new management regime. While there were no documented interactions with false

killer whales in the shallow-set fishery during this period, there have been observed serious injuries or mortalities to the following marine mammal stocks: Risso's dolphin (*Grampus griseus*) (one serious injury in 2005; one serious injury and one mortality in 2006; three serious injuries in 2007); bottlenose dolphin (*Tursiops truncatus*) (one serious injury in 2006; three serious injuries in 2007); and humpback whale (*Megaptera novaeangliae*) (one serious injury in 2006). There was also an interaction with a Bryde's whale (*Balaenoptera edeni*) in 2005 that did not result in a serious injury or mortality.

Each of these serious injuries or mortalities occurred outside U.S. waters. Section 117(a) of the MMPA requires NMFS to prepare a draft stock assessment for each marine mammal stock which occurs in waters under the jurisdiction of the United States. Each draft stock assessment must include, among other things, an estimate of the PBR level for the stock. Because the serious injuries and mortality of Risso's dolphins and bottlenose dolphins occurred outside U.S. waters, there is no PBR for these stocks upon which to conduct a tier analysis (as described in the preamble of this proposed rule). However, there is a high degree of certainty that the humpback whale from the 2006 interaction was from the Central North Pacific stock of humpback whales, which migrates seasonally between breeding grounds in HI and foraging areas in AK. The PBR of this stock is 12.9; the annual mortality and serious injury of this stock in the shallow set fishery is 1.94 percent of PBR (one animal during the four-year period 2004–2007, or 0.25 per year). Because the annual mortality and serious injury of this humpback whale stock is greater than 1 percent and less than 50 percent of the PBR level, NMFS has determined that the shallow-set portion of the longline fishery merits recategorization as a Category II fishery.

CA angel shark/halibut and other species set gillnet (>3.5 in mesh)

NMFS proposes to reclassify the ''CA angel shark/halibut and other species set gillnet (>3.5 mesh size) fishery'' (proposed to be renamed ''CA halibut/white seabass and other species set gillnet (>3.5 in mesh) fishery'' in this proposed rule) from a Category I to a Category II fishery. This fishery was classified as Category I due to serious injury and mortality to the Monterey Bay and Morro Bay stocks of central CA harbor porpoises. Since 2002, however, there has been a ban on set gillnetting in central CA. As a result, effort in this fishery shifted and is now concentrated in southern CA, south of the range of these harbor porpoise stocks. The elimination of this fishery from the stocks' range removed the threat of mortality and serious injury to the stocks. Because interactions ceased as of 2002, no tier analysis was conducted for the level of annual mortality and serious injury of these stocks in this fishery for this proposed reclassification. The mean annual mortality and serious injury of CA sea lions in this fishery is 1,138, or 13 percent of PBR (PBR=8,511); the mean annual mortality and serious injury of harbor seals (CA stock) is 386, which is 20 percent of PBR (PBR=1,896). Thus, the mean annual serious injury and mortality of CA sea lions and harbor seals (CA stock) in this fishery is greater than 1–percent and less than 50 percent of the stocks' PBR levels, thereby further supporting a Category II classification. Observer coverage in this fishery is approximately 5 percent.

West Coast trap/pot fisheries

NMFS proposes the recategorization of various West Coast trap and pot fisheries from Category III to Category II based on interactions with humpback whales (CA/OR/WA stock). Below, NMFS provides a review of the analysis conducted to support the proposed recategorizations. Comments are specifically requested from the public on the proposed recategorizations of these fisheries.

From January 1, 2002, through December 31, 2006, NMFS documented 13 sightings of free-swimming humpback whales entangled in trap gear, pot gear, or unidentified gear along the U.S. West Coast. Twelve of the thirteen observations occurred off the coast of CA and one was off the coast of OR. One stranded dead humpback whale was reported in OR, and it is believed that this humpback whale was one of the 13 free-swimming entangled whales reported to NMFS.

A review of the available data from the NMFS Large Whale Disentanglement Network (LWDN) was initiated to understand the nature of the 13 entangled humpback whales (Table 5). Four animals were observed with pots or traps on their bodies during the reported entanglement, including one with spot prawn gear and one with sablefish gear. Of these, three were not disentangled from the gear and, due to the amount of trailing gear reported on these animals, these three are considered seriously injured. One of the four observed entangled animals was disentangled from pot gear and released without injury; however, the animal would have been considered seriously injured if it had not been observed, tracked, and disentangled. One whale was observed off OR entangled in gear which has been identified as likely to have been Dungeness crab pot gear based upon photos of the animal. An additional three humpback whales were reported to NMFS as being entangled in crabpot line, although there is no way to determine if the line was actually from pot or trap gear. Five humpback whales were reported to NMFS entangled in line or netting, with no means of identifying the type of fishing gear involved. Details of these entanglements can be found in Table 5.

For this analysis, NMFS has been conservative in attributing records of entanglements to the pot and traps fisheries. It is difficult to identify fishing gear based upon observations of gear on animals; for most reports there are no photographs of the animals. Therefore, only confirmed and probable entanglements of humpback whales are attributed to a particular pot/trap fishery. Using this criterion, it is estimated that four humpback whales were seriously injured or killed between 2002 and 2006 due to entanglements with pot or trap gear. This number should be considered a minimum estimate of seriously injured animals because it is based upon opportunistic sightings reported to NMFS and thus do not represent observer data or comprehensive surveys. The entire record of seriously injured or killed humpback whales is used in the Tier 1 evaluation, but only the three confirmed serious injuries are used in the Tier 2 evaluation of the pot and trap fisheries.

Tier 1 evaluation: NMFS began by considering the total annual mortality and serious injury of the CA/OR/WA humpback whale stock across all U.S. fisheries. The draft 2008 SARs lists the total observed mortalities and serious injuries of humpback whales from 2002 through 2006 as 13 (this number includes one animal reported to the NMFS entangled in unidentified gillnet gear). This results in an annual mean take of 2.6 humpback whales per year, which exceeds 10 percent of the PBR level (2.5) for this stock.

Tier 2 evaluation: Three humpback whales (CA/OR/WA) have been positively identified as being entangled and seriously injured in pot/trap gear between January 1, 2002, and December 31, 2006. A single serious injury or mortality of a humpback whale in a trap/pot fishery results in a level of take of 0.2 animals per year, or 8 percent of the PBR (PBR=2.5 animals), which is consistent with a Category II categorization (the total estimated

annual serious injury of mortality is greater than 1 percent and less than 50 percent of PBR). Category II is also the appropriate category for fisheries for which reliable information on the frequency of marine mammal serious injury or mortalities is lacking. Fisheries are placed in Category II after evaluating such factors as the type of gear being used, stranding records, the distribution of marine mammals in the area of the fishery, and at the discretion of the Assistant Administrator for Fisheries (see 50 CFR 229.3). As described in the 2007 Final LOF (72 FR 14466, March 28, 2007), the available information from the LWDN alone is not sufficient to identify which of the numerous pot and trap fisheries may interact with humpback whales and cause serious injuries or mortalities. Therefore, other methods must be used to determine which pot and trap fisheries should be listed as Category II.

As described in the 2008 Final LOF (72 FR 66048, November 27, 2007), NMFS recently prepared, with assistance from the states, a characterization of the current commercial trap/pot fisheries off the CA, OR, and WA coasts. NMFS has also been working closely with the states to obtain the best available information on these trap/pot fisheries and has integrated this into its analysis. NMFS used the reported entanglement of humpback whales as the data that drives the recategorization of some fisheries. As part of the analysis, some assumptions were necessary and are outlined here. NMFS assumes that the time and area in which the entanglement was reported is the location where the entanglement occurred, as with a humpback whale entangled off San Francisco in December 2005. NMFS acknowledges that it is possible that a whale could travel from other areas carrying gear. NMFS also assumes that the reported entanglements are a fraction of the total mortalities and serious injury caused by trap/pot gear, and the reports are best used to represent areas where fisheries and humpback whales interact. Under this assumption, all entanglements characterized as confirmed entanglements in trap/pot gear and unconfirmed but probable entanglement with trap/pot gear (see Table 5) were used to determine which commercial fisheries are most likely to interact with humpback whales. Finally, NMFS assumed that the distribution of trap/pot fishing effort and the distribution of humpback whales are not likely to drastically change in the near future; therefore, past interactions are reasonable predictors of future events. NMFS acknowledges that environmental variability can change the distribution of fishing effort and marine mammals; NMFS will continue to monitor both and make recommendations for changes to the LOF as appropriate.

To determine which pot and trap fisheries should be listed as Category II, NMFS asked the following questions: (1) Has the fishery been identified as causing one of the entanglements of humpback whales?; and (2) Does the fishery operate in the area and time when a humpback was reported entangled in pot and trap gear? Fisheries that did not meet either of these criterion were eliminated from possibly causing humpback whale mortalities or serious injuries and remained Category III fisheries.

Once NMFS identified which fisheries met either of the criterion above, NMFS considered the following: (1) Does the fishery overlap, spatially and temporally, with the known distribution of the Eastern North Pacific stock of humpback whales?; and (2) Does the fishery currently have a substantial amount of effort and is there likely to be change in this level of effort in the future? These second two questions address whether future interactions, based upon observed entanglements, would be likely. NMFS considered these factors because while one observed interaction may be insufficient to recategorize a fishery; a likelihood of entanglement supports the recategorization of some fisheries.

Based on the analysis described above, the following are being proposed to be classified as Category II fisheries (all were Category III on the 2008 LOF or included within the Category III ''CA lobster, prawn, shrimp, rock crab, fish pot'' [proposed to be renamed the ''CA spiny lobster, coonstrip shrimp, finfish, rock crab, tanner crab pot or trap'']):

(1) The ''CA spot prawn pot fishery'' (see name change explanation for this fishery described below under ''West Coast trap/pot fisheries'' discussion in section ''Fishery Name and Organizational Changes and Clarifications'') as a Category II fishery. A humpback whale was reported entangled and seriously injured in this gear type in September 2005 at Monterey. As described above, a single humpback whale serious injury or mortality is equal to 8 percent of the stock's PBR; therefore, a Category II categorization is appropriate. The estimated number of vessels or participants in the ''CA spot prawn pot fishery'' is 29.

(2) The ''WA/OR/CA sablefish pot fishery''. A humpback whale was reported entangled in this gear type in September 2006 off Monterey, CA. As described above, a single humpback whale serious injury or mortality is equal to 8 percent of the stock's PBR; therefore, a Category II categorization is appropriate. The estimated number of vessels or participants in the ''WA/OR/CA sablefish pot fishery'' is 155, including both limited and open access permits (there are 32 limited access permits).

(3) The ''OR Dungeness crab pot fishery'' (see name change explanation for this fishery described below under ''West Coast trap/pot fisheries'' discussion in section ''Fishery Name and Organizational Changes and Clarifications''). A humpback whale was observed and photographed entangled in gear in May 2006 off the coast of OR. This animal is believed to be the same animal that stranded on a beach in OR with marks consistent with the type of entanglement observed. Based upon the gear observed on the animal in the field and in photographs, and the unusually high amount of Dungeness crab gear in the water during that time, it is most likely that this is the type of gear that entangled the animal. As described above, a single humpback whale serious injury or mortality is equal to 8 percent of the stock's PBR; therefore, a Category II categorization is appropriate. The estimated number of vessels or participants in the ''OR Dungeness crab pot fishery'' is 433 (433 permits exist, 364 landings were made in 2006).

(4) The ''CA Dungeness crab pot fishery'' (see name change explanation for this fishery described below under ''West Coast trap/pot fisheries'' discussion in section ''Fishery Name and Organizational Changes and Clarifications''). Two of the reported humpback whale entanglements (shown in Table 5) could not be identified to a type of pot or trap fishery by gear type, thus NMFS considered whether this fishery could be listed as Category II by analogy to other West Coast trap/pot fisheries proposed for Category II classification in this rule, because it operates with similar gear in the same location as confirmed humpback whale serious injury events. NMFS reviewed the entanglements and identified which pot and trap fisheries were operating in the time and area of the reported entanglements. The ''CA Dungeness crab pot'' and the ''CA spot prawn trap'' fisheries were both operating at the time and place of the two humpback whale entanglements, thus either of these could have caused the serious injury to the humpback whales. Therefore, NMFS

proposes to reclassify the ''CA Dungeness crab pot fishery'' as a Category II fishery by analogy. The estimated number of vessels or participants in the ''CA Dungeness crab pot fishery'' is 625 (625 permits exist, 435 landings were made in 2006).

NMFS acknowledges that other pot and trap fisheries may overlap in space and time with humpback whales feeding or migrating along the West Coast, but in the absence of evidence of interactions, NMFS cannot justify placing these fisheries in Category II at this time. If additional information becomes available, NMFS will consider recategorization of other trap/pot fisheries.

NMFS also reviewed the level of gray whale takes in all West coast commercial fisheries, including trap and pot fisheries, and determined that it was well below 10 percent of the stock's PBR, thus re-categorization of trap and pot fisheries based upon gray whale takes is not warranted. Entanglements of gray whales in trap and pot gear have been reported; however, NMFS has not yet determined which specific fisheries may be involved. Therefore, gray whales will remain listed under the Category III, ''CA lobster, prawn, shrimp, rock crab, fish pot fishery'' (proposed to be renamed as the ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery'' in this proposed rule) and under the proposed Category II trap and pot fisheries discussed below (gray whales have been listed as injured or killed in these fisheries since the 2005 and 2007 LOFs, respectively). Data related to interactions with gray whales and the newly categorized Category II trap and pot fisheries will be reviewed and discussed in future LOFs.

Addition of Fisheries to the LOF

NMFS proposes to add the ''HI deep-set (tuna target) longline/set line fishery'' as a Category I (see the discussion in the previous section for details).

NMFS proposes to add the ''HI shallow-set (swordfish target) longline/set line fishery'' as a Category II (see the discussion in the previous section for details).

NMFS proposes to add the ''CA spot prawn trap fishery'' as a Category II (see the discussion in the previous section for details).

NMFS proposes to add the ''CA Dungeness crab pot fishery'' as a Category II (see the discussion in the previous section for details).

NMFS proposes to add the ''OR Dungeness crab pot fishery'' as a Category II (see the discussion in the previous section for details).

NMFS proposes to add the ''WA Dungeness crab pot fishery'' as a Category III (see the discussion in the previous section for details).

NMFS proposes to add ''AK statewide miscellaneous finfish pot fishery'' as a Category III fishery. There are 293 participants in this fishery and no documented takes of marine mammals.

NMFS proposes to add ''AK shrimp pot, except Southeast fishery'' as a Category III fishery. There are 15 participants in this fishery and no documented takes of marine mammals.

Removal of Fisheries from the LOF

NMFS propose to remove the Category II ''AK Metlakatla/Annette Island salmon drift gillnet'' fishery from the LOF. NMFS received a comment on the 2008 LOF stating that this fishery is an exclusively tribal fishery (72 FR 66048, November 27, 2007, comment/response 27). As an exclusively tribal fishery, this fishery is not subject to the LOF (Final rule implementing section 118 of the MMPA, 60 FR 45086, August 30, 1995, comment/response 68). Tribal governments have developed regulations for the management of tribal fishing under treaties. NMFS and other fisheries regulatory agencies have participated with the tribes during this regulatory development.

Fishery Name and Organizational Changes and Clarifications

NMFS proposes to change the name of the ''CA angel shark/halibut and other species set gillnet (>3.5 mesh size)'' fishery to the ''CA halibut/white seabass and other species set gillnet (>3.5 in. mesh) fishery'' to more accurately reflect the current target species of the fishery.

NMFS proposes to change the name of the Category III ''AK state-managed waters groundfish longline/set line (including sablefish, rockfish, and miscellaneous finfish'' to ''AK state-managed waters longline/set line (including sablefish, rockfish, lingcod, and miscellaneous finfish'' to more accurately reflect the current target species of the fishery.

NMFS proposes to change the name of the Category III ''AK North Pacific halibut handline and mechanical jig fishery'' to ''AK North Pacific halibut handline/hand troll and mechanical jig fishery'' to more accurately reflect the gear used in the fishery.

NMFS proposes to change the name of the Category III ''AK miscellaneous finfish handline and mechanical jig fishery'' to ''AK miscellaneous finfish handline/hand troll and mechanical jig fishery'' to more accurately reflect the gear used in the fishery.

NMFS proposes to remove the superscript ''1'' following Steller sea lion, Western U.S. stock, under the Category II ''AK Bristol Bay salmon drift gillnet fishery'' in Table 1. Although Steller sea lions (Western U.S. stock) were reported taken in this fishery in logbook entries prior to the 1996 LOF (2007 SAR, Appendix 7), there have been no reported interactions since 1993. Therefore, this Steller sea lion stock is not driving the categorization of this fishery. However, this fishery is classified as a Category II based on analogy with other Category II AK gillnet fisheries because it operates in the same manner as other AK gillnet fisheries and it has not been observed by the Alaska Marine Mammal Observer Program. Therefore, the superscript ''2'' will remain after the fishery's name in Table 1.

West Coast trap/pot fisheries

NMFS conducted a review of all West Coast commercial pot and trap fisheries in response to reports of humpback whale entanglements in this gear type and public comment requests for a review on previous LOFs. As described in the ''Fishery Classification'' section above, NMFS is proposing to recategorize a number of West Coast commercial pot and trap fisheries based upon interactions with humpback whales. The fisheries as currently named do not allow NMFS to categorize them appropriately, thus NMFS proposes to rename certain West Coast trap/pot fisheries by splitting and combining them based upon the probability of interactions with the gear and humpback whales and the current management structure.

NMFS proposes to split the prawn portion of the ''CA lobster, prawn, shrimp, rock crab, and fish pot fishery'' into a separate fishery, the ''CA spot prawn fishery,'' and rename the remaining portion of the fishery the ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery.'' NMFS has determined that the current name of the fishery does not reflect the current fisheries and proposes to list the ''CA spot prawn trap fishery'' as a separate Category II fishery due to an observed entanglement with a humpback whale. Further, the ''CA spot prawn trap fishery'' operates in a time and area when humpback whales are found off of the coast of CA. NMFS proposes to rename the remaining portion of the fishery the ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery'' because these fisheries are all managed

by the State of CA and the available data from the LWDN shows a low likelihood of interactions with humpback whales because of the areas and times in which fishery effort occurs and the amount of gear used in these fisheries. This fishery will remain a Category III fishery on the LOF.

NMFS proposes to list the ''CA spot prawn trap fishery'' as a separate Category II fishery due to an observed entanglement with a humpback whale. Further, this fishery operates in a time and area when humpback whales are found off of the coast of CA.

NMFS proposes to split the ''WA/OR/CA crab pot fishery'' into three fisheries, the ''CA Dungeness crab pot,'' ''OR Dungeness crab pot,'' and ''WA Dungeness crab pot'' fisheries. Each of these fisheries is managed and permitted by the individual states and each state has different regulations and regulatory capacity for their fishery. Also, as explained previously, humpback whale entanglements have occurred in Dungeness crab pot gear off the states of CA and OR, but not WA. Thus by splitting and re-naming this fishery, NMFS is able to appropriately categorize only those Dungeness crab pot fisheries that are of most concern due to marine mammal interactions (i.e., categorize the CA and OR Dungeness crab pot fisheries as Category II, and the WA Dungeness crab pot fishery as Category III).

Number of Vessels/Persons

NMFS proposes to update the estimated number of vessels or persons in the Category III ''CA lobster, prawn, shrimp, rock crab, and fish pot fishery'' (proposed to be renamed the ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery'' in this rule) from 608 to 530.

NMFS proposes to update the estimated number of vessels or persons in the Category III ''OR/CA hagfish pot or trap fishery'' from 25 to 54.

NMFS proposes to update the estimated number of vessels or persons in the majority of the AK Category II fisheries because the information has not been updated in recent LOFs: AK Southeast salmon drift gillnet fishery from 481 to 476; AK Yakutat salmon set gillnet from 170 to 166; AK Prince William Sound salmon drift gillnet from 541 to 537; AK Cook Inlet salmon drift gillnet from 576 to 571; AK Cook Inlet salmon set gillnet from 745 to 738; AK Peninsula/Aleutian Islands salmon drift gillnet from 164 to 162; AK Peninsula/Aleutian Islands salmon set gillnet from 116 to 115; AK Bristol Bay salmon drift gillnet from 1,903 to 1,862; AK Bristol Bay salmon set gillnet from 1,014 to 983; AK Southeast salmon purse seine fishery from 416 to 415; AK Bering Sea, Aleutian Islands pollock trawl from 120 to 95; AK Bering Sea, Aleutian Islands Pacific cod trawl from 114 to 54; AK Bering Sea, Aleutian Islands finfish trawl from 26 to 34.

NMFS proposes to update the estimated number of vessels or persons in the majority of the AK Category III fisheries because the information has not been updated in recent LOFs: AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet from 1,922 to 1,824 ; AK roe herring and food/bait herring gillnet from 2,034 to 986; AK miscellaneous finfish set gillnet from 3 to 0; AK salmon purse seine (except Southeast AK, which is Category II) from 953 to 936; AK salmon beach seine from 34 to 31; AK roe herring and food/bait herring purse seine from 624 to 361; AK roe herring and food/bait herring beach seine from 8 to 4; AK octopus/squid purse seine from 2 to 0; AK salmon troll from 2,335 to 2,045; AK North Pacific halibut/bottom fish troll from 1,530 (330 AK) to 1,302 (102 AK); AK state-managed waters groundfish longline/set line (including sablefish, rockfish, and miscellaneous finfish) from 731 to 1,448; AK Gulf of Alaska rockfish longline from 421 to 0; AK Gulf of Alaska sablefish longline from 412 to 291; AK Bering Sea, Aleutian Islands Greenland turbot longline from 12 to 29; AK Bering Sea, Aleutian Islands rockfish longline from 17 to 0; AK Bering Sea, Aleutian Islands sablefish longline from 63 to 28; AK halibut longline/set line (State and Federal waters) from 3,079 to 2,521; AK octopus/squid longline from 7 to 2; AK shrimp otter and beam trawl (statewide and Cook Inlet) from 58 to 32; AK Gulf of Alaska flatfish trawl from 52 to 41; AK Gulf of Alaska Pacific cod trawl from 101 to 62; AK Gulf of Alaska pollock trawl from 83 to 62; AK Gulf of Alaska rockfish trawl from 45 to 34; AK Bering Sea, Aleutian Islands Atka mackerel trawl from 8 to 9; AK Bering Sea, Aleutian Islands Pacific cod trawl from 87 to 93; AK Bering Sea, Aleutian Islands rockfish trawl from 9 to 10; AK miscellaneous finfish otter or beam trawl from 624 to 317; AK food/bait herring trawl from 3 to 4; AK Bering Sea, Aleutian Islands Pacific cod pot from 76 to 68; AK Bering Sea, Aleutian Islands crab pot from 329 to 297; AK Gulf of Alaska crab pot from unknown to 300; AK Southeast Alaska crab pot from unknown to 433; AK Southeast Alaska shrimp pot from unknown to 283; AK octopus/squid pot from 72 to 27; AK snail pot from 2 to 1; AK North Pacific halibut handline/hand troll and mechanical jig from 93 to 228; AK miscellaneous finfish handline/hand troll and mechanical jig from 100 to 445; AK octopus/squid handline form 2 to 0; AK Southeast herring roe/food/bait pound net from 3 to 6; AK dungeness crab (hand pick/dive) from 3 to 2; AK herring spawn on kelp (hand pick/dive) from 363 to 266; AK urchin and other fish/shellfish (hand pick/dive) from 471 to 570; AK commercial passenger fishing vessel from >7,000 (1,107 AK) to >7,000 (2,702 AK).

List of Species That are Incidentally Injured or Killed

NMFS proposes to remove the harbor porpoise (central CA) from the list of marine mammal species and stocks incidentally killed/injured in the ''CA angel shark/halibut and other species set gillnet (>3.5 mesh size) fishery'' (proposed for recategorization to a Category II, and renamed as the ''CA halibut/white seabass and other species set gillnet (>3.5 mesh size) fishery'' in this proposed rule). As described above, there has been a ban on set gillnetting in central CA since 2002, which has eliminated the threat to the Monterey Bay stock and Morro Bay stock of harbor porpoise in this fishery. This fishery is now concentrated in southern California, south of the range of these stocks of harbor porpoise.

NMFS proposes to remove the following marine mammals from the list of species/stocks incidentally killed/injured in the ''CA/OR thresher shark/swordfish drift gillnet (≥14 in. mesh) fishery≥: Dall's porpoise (CA/OR/WA), fin whale (CA/OR/WA), gray whale (Eastern North Pacific), humpback whale (CA/OR/WA), and sperm whale (CA/OR/WA). None of these species have been observed taken in the fishery from January 1, 2002 through December 31, 2006 (the most recent available information). This fishery has been observed by NMFS at approximately 20 percent annually during this five year period.

NMFS proposes to remove humpback whales (CA/OR/WA) from the list of species/stocks incidentally killed/injured in the Category II ''WA Dungeness pot fishery'' (proposed to be separated from the ''WA/OR/CA crab pot fishery'' in this proposed rule). There have been no recent interactions with this species.

NMFS proposes to remove humpback whales (CA/OR/WA) and sea otters (CA) from the list of species/stocks incidentally killed/injured in the Category III ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery'' (currently listed as the ''CA lobster,

prawn, shrimp, rock crab, fish pot fishery''). As described above in the discussion of West Coast trap/pot fisheries, NMFS analysis of the available information on humpback whale entanglements in pot and trap gear suggests that these gears are not likely to cause interactions. NMFS proposes to remove sea otter (CA) from the list of species/stocks incidentally killed/injured due to a lack of recent data to indicate that sea otters are seriously injured or killed in this fishery. The only available information of a sea otter taken in one of a these types of pots or traps is from November 1987. Sea otters (CA) will not be listed as incidentally killed/injured in the proposed Category II ''CA spot prawn trap'' fisheries (proposed to be separated out from the renamed ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery'' in this proposed rule). The only available information of a sea otter taken in each of these types of pots or traps is from 1991. There have been no reports of interactions since 1987 or 1991, respectively.

NMFS proposes to change the stock name of humpback whales from humpback whales (Eastern North Pacific) to humpback whales (CA/OR/WA) for all fisheries in Table 1 in which this species is listed as incidentally killed or injured to match the stock name in the most current SARs. The stock name was changed in the Final 2007 SARs.

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

Addition of Fisheries to the LOF

NMFS proposes to add the ''U.S. Atlantic, Gulf of Mexico trotline fishery'' as a Category III fishery. Trotline gear can be described as longline which rests on the seafloor, attached to anchored floats or buoys at each end, to which a series of baited hooks are attached at intervals of 2–6 ft (0.6–1.8 m). The line is typically set parallel to the shore in water 5–12 ft (1.5–3.7 m) deep and the line can reach up to a mile (1.6 km) in length. Trotlines are typically worked from a boat where rollers are used to haul the line from the water. Target species include blue crab, catfish, and other finfish throughout the coastal Atlantic and Gulf of Mexico. ''Hook and line'' gear is defined at 50 CFR 600.10 as ''one or more hooks attached to one or more lines (can include a troll).'' Therefore, NMFS proposes to classify the ''U.S. Atlantic, Gulf of Mexico trotline fishery'' under ''Longline/Hook-and-Line Fisheries'' in Table 2 of the LOF. The number of participants in this fishery is unknown and there are no known takes of any marine mammal from trotline gear.

Fishery Name and Organizational Changes and Clarifications

Northeast sink gillnet fishery

NMFS proposes to clarify and correct the boundary definition of the Category I ''Northeast sink gillnet fishery.'' The current boundaries are defined as ''excluding Long Island Sound or other waters where gillnet fisheries are listed as Category III. At this time, these Category II and II fisheries include...'' (72 FR 66056, November 27, 2007). NMFS proposes to clarify this boundary definition by replacing this with the following language: ''...excluding Long Island Sound and other waters where gillnet fisheries are listed as Category II and III. At this time, these Category II and III fisheries include...''

Northeast anchored float gillnet fishery

NMFS proposes to clarify the boundary definition of the Category II ''Northeast anchored float gillnet fishery.'' The current fishery boundary is defined as ''...from the U.S.- Canada border to Long Island, NY, at at 72° 30' W. long south to 36° 33.03' N. lat. and east to the eastern edge of the EEZ...'' (72 FR 66056, November 27, 2007). NMFS proposes to clarify this boundary definition by adding the following language: ''...from the U.S.-Canada border to Long Island, NY, at 72° 30' W. long south to 36° 33.03' N. lat. (corresponding with the VA/NC border) and east to the eastern edge of the EEZ...''

Northeast drift gillnet fishery

NMFS proposes to clarify the boundary definition of the Category II ''Northeast drift gillnet fishery.'' The current fishery boundary is defined as occurring ''...at any depth in the water column from the U.S.-Canada border to Long Island, NY, at 72° 30' W. long. south to 36° 33.03' N. lat. and east to the eastern edge of the EEZ...'' (72 FR 66056, November 27, 2007). NMFS proposes to clarify this boundary definition by adding the following language: ''...at any depth in the water column from the U.S.-Canada border to Long Island, NY, at 72° 30' W. long. south to 36° 33.03' N. lat. (corresponding with the VA/NC border) and east to the eastern edge of the EEZ...''

Mid-Atlantic mid-water trawl fishery

NMFS proposes to modify the fishery description for the Category II ''Mid-Atlantic mid-water trawl fishery.'' NMFS received a comment on the 2008 LOF suggesting that the ''Mid-Atlantic mid-water trawl fishery'' was an inaccurate characterization of the fishery targeting *Ilex* squid, *Loligo* squid, and Atlantic butterfish (72 FR 66064, November 27, 2007, comment/response 28). After consulting with the Northeast Fisheries Science Center, observer reports, and vessel trip report (VTR) data , NMFS concluded that the gear targeting these species is better characterized by the ''Mid-Atlantic bottom trawl fishery'' (Category II) rather than the ''Mid-Atlantic mid-water trawl fishery'' (Category II) as it is currently listed (72 FR 66048, November 27, 2007). Additionally, NMFS has also become aware of additional species targeted by the ''Mid-Atlantic mid-water trawl fishery'' (2007 final SAR). To reflect this new information, NMFS proposes to replace the current ''Mid-Atlantic mid-water trawl'' fishery description with the following description:

''The 'Mid-Atlantic mid-water trawl fishery' primarily targets Atlantic mackerel, chub mackerel, and miscellaneous other pelagic species. This fishery consists of both single and pair trawls, which are designed, capable, or used to fish for pelagic species with no portion of the gear designed to be operated in contact with the bottom. The fishery for Atlantic mackerel occurs primarily from southern New England through the mid-Atlantic from January to March and in the Gulf of Maine during the summer and fall (May to December). This fishery is managed under the Federal Atlantic Mackerel, Squid, and Butterfish FMP using an annual quota system.''

Mid-Atlantic bottom trawl fishery

NMFS proposes to modify the fishery description for the Category II ''Mid-Atlantic bottom trawl fishery.'' NMFS received a comment on the 2008 LOF regarding gear used for targeting *Ilex* squid, *Loligo* squid, and Atlantic butterfish (72 FR 66048, November 27, 2007, comment/response 28). After consulting with the Northeast Fisheries Science Center, observer reports, and VTR data , NMFS concluded that the gear targeting these species is better characterized by the ''Mid-Atlantic bottom trawl fishery'' (Category II) rather than the ''Mid-Atlantic mid-water trawl fishery'' (Category II) as it is currently listed (72 FR 66057, November 27, 2007). Additionally, NMFS has also become aware of additional species targeted by the ''Mid-Atlantic bottom trawl fishery'' (2007 final SAR). To reflect this new information, NMFS proposes to replace the current ''Mid-Atlantic bottom trawl'' fishery

description with the following description:

''The Category II 'Mid-Atlantic bottom trawl fishery' uses bottom trawl gear to target species including but not limited to: bluefish, croaker, monkfish, summer flounder (fluke), winter flounder, silver hake (whiting), spiny dogfish, smooth dogfish, scup, black sea bass, Atlantic cod, haddock, pollock, yellowtail flounder, witch flounder, windowpane flounder, summer flounder, American plaice, Atlantic halibut, redfish, red hake, white hake, ocean pout, skate spp, Atlantic mackerel, *Loligo* squid, *Ilex* squid, and Atlantic butterfish. These fisheries occur year round from Cape Cod, MA, to Cape Hatteras, NC, in waters west of 72° 30' W. long. and north of a line extending due east from the NC/SC border. While the gear characteristics for the mixed groundfish bottom trawl gear have not yet been determined, the *Ilex* and *Loligo* squid fisheries are dominated by small-mesh otter trawls. The *Loligo* fishery occurs mostly offshore near the edge of the continental shelf during fall and winter months (October to March) and inshore during spring and summer (April-September) though landings of *Loligo* are also taken by inshore pound nets and fish traps in the spring and summer. The fishery for *Ilex* occurs offshore, mainly in continental shelf and slope waters during summer months (June-September). The *Ilex* and *Loligo* fisheries are managed by moratorium permits, gear and area restrictions, quotas, and trip limits. Atlantic butterfish are mainly caught as bycatch in the directed squid and mackerel fisheries and observer data has suggested that there is a significant amount of butterfish discarding that occurs at sea.''

Mid-Atlantic haul/beach seine fishery

NMFS proposes to update the fishery description for the Category II 'Mid-Atlantic haul/beach seine fishery.' In the Final 2008 LOF (72 FR 66048, November 27, 2007), NMFS stated that it would consider revising the description of the fishery following rulemaking by the North Carolina Division of Marine Fisheries (NCDMF) involving the NC Atlantic Ocean striped bass beach seine fishery. In an effort to distinguish between beach-anchored gillnets and true beach seines, NCDMF recently finalized regulations, effective for the fall 2008 fishery, defining a beach seine for the Atlantic Ocean striped bass beach seine fishery. Fishers participating in the fishery will be required to use multifilament or multi-fiber webbing swipe nets fished from the ocean beach that are deployed from a vessel launched from the ocean beach where the fishing operation takes place. Therefore, NMFS proposes to add the following information to the description from the Final 2008 LOF:

''The NC component of this fishery operates primarily along the Outer Banks using small and large mesh nets. Small mesh nets are generally used in the spring and fall to target gray trout (weakfish), speckled trout, spot, kingfish (sea mullet), bluefish, and harvest fish (star butters). Large mesh nets are used to target Atlantic striped bass during the winter and are regulated via NC Marine Fisheries Commission rules and NCDMF proclamations. Construction and characteristics of the large and small mesh nets differ, but they generally both gill fish, rather than haul fish to shore in the manner of a traditional beach seine. Small mesh nets are generally constructed with a combination of multifilament and monofilament webbing or all monofilament webbing material. If a combination of materials is used, the construction design often consists of monofilament for the inshore (wash) and offshore (wing) portions of the net, while the middle (bunt) is constructed of twisted nylong. Conversely, large mesh nets are constructed of all monofilament material. Despite the difference in construction, they are set and hauled similarly. Nets are deployed out of the stern of surf dories and set perpendicular to the shoreline. A truck is generally used to haul the net ashore by attaching one end of the net to the truck and pulling it ashore while the other end remains fixed until the end of the haul.

NC fishers previously referred to this type of gear as a beach seine because of the way the gear was set and hauled. Because of the manner in which both large and small mesh nets are constructed (i.e., inclusion of monofilament material) and fished, they operate as gillnets rather than beach seines, and NMFS considers them a component of the Category I, 'Mid-Atlantic gillnet fishery.' Once NCDMF's regulation is effective, the Atlantic Ocean striped bass beach seine fishery will be the only fishery included under the 'Mid-Atlantic haul/beach seine fishery' for NC. Therefore, small and large mesh nets constructed of monofilament and multifilament material will be considered part of the Category I ''Mid-Atlantic gillnet fishery.''

In addition to the NC component as described above, the 'Mid-Atlantic haul/beach seine fishery' also includes haul seining in other areas of the mid-Atlantic, including VA, MD, and NJ. Because the net materials and fishing practices of the Atlantic Ocean striped bass beach seine fishery in NC are different from haul seining in other areas, NMFS may consider splitting this fishery in the future.''

List of Species That are Incidentally Seriously Injured or Killed

NMFS proposes to add white-side dolphin (Western North Atlantic [WNA] stock) to the list of marine mammal species and stocks incidentally injured or killed in the Category II ''Mid-Atlantic bottom trawl fishery.'' Information presented in the 2007 Final SAR states that one Atlantic white-sided dolphin incidental take was observed in 1997 and another in 2005.

NMFS proposes to add harbor seal (WNA stock) to the list of marine mammal species and stocks incidentally injured or killed in the Category II ''Northeast bottom trawl fishery.'' Recent information presented in the 2007 final SAR states that two harbor seal mortalities were observed between 2001 and 2005.

NMFS proposes to add bottlenose dolphins (WNA coastal stock) to the list of marine mammal species and stocks incidentally injured or killed in the Category III ''FL spiny lobster trap/pot fishery.'' The 2008 LOF includes the bottlenose dolphins (Eastern GMX coastal stock) as incidentally killed or injured in the fishery, but stranding data indicate that, though rare, interactions are also occurring in the Atlantic. Two bottlenose dolphins are known to have stranded with spiny lobster trap/pot gear in Miami Beach, FL: one on October 4, 1997, and one on August 17, 2007. These animals fall within the WNA coastal bottlenose dolphin stock's Central Florida Management Unit, which currently has an unknown PBR (2007 final SAR). Therefore, NMFS cannot determine whether this fishery requires reclassification until more information is available. There is no observer program for this fishery.

NMFS proposes to add bottlenose dolphins (WNA coastal stock) to the list of marine mammal species and stocks incidentally injured or killed in the Category III ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot fishery.'' The 2008 LOF states that there are no documented marine mammal interactions with this fishery. However, stranding data indicate that bottlenose dolphins interact with this fishery. Two bottlenose dolphins stranded with stone crab trap/pot gear: one in Biscayne Bay, FL, on May 5, 2003, and one in Miami Beach, FL, on November 21, 2006. These animals fall within the WNA coastal bottlenose dolphin stock's

Central Florida Management Unit, which currently has an unknown PBR (2007 final SAR). Therefore, NMFS cannot determine whether this fishery requires reclassification until more information is available. There is no observer program for this fishery.

List of Fisheries

The following tables set forth the proposed list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. In Tables 1 and 2, the estimated number of vessels/participants in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the most recent LOF is used. For high seas fisheries, Table 3 lists the number of currently valid HSFCA permits held by fishers. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data at this time.

Tables 1, 2, and 3 also list the marine mammal species and stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to be injured or killed in a given fishery, but also includes species or stocks for which there are anecdotal records of an injury or mortality. Additionally, species identified by logbook entries may not be verified. NMFS has designated those stocks driving a fishery's classification (i.e., the fishery is classified based on serious injuries and mortalities of a marine mammal stock greater than 50 percent [Category I], or greater than 1 percent and less than 50 percent [Category II], of a stock's PBR) by a ''1≥after the stock's name.

In Tables 1 and 2, there are several fisheries classified in Category II that have no recent documented injuries or mortalities of marine mammals, or that did not result in a serious injury or mortality rate greater than 1 percent of a stock's PBR level. NMFS has classified these fisheries by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of a ''Category II fishery'' in 50 CFR 229.2. NMFS has designated those fisheries originally listed by analogy in Tables 1 and 2 by a ''2'' after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the EEZ boundary, and therefore operate within U.S. waters and on the high seas. NMFS has designated those fisheries in each Table by a ''*'' after the fishery's name.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; Table 3 lists commercial fisheries on the High Seas; Table 4 lists fisheries affected by Take Reduction Teams or Plans.

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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/OR thresher shark/swordfish drift gillnet (≥14 in mesh) *	85	California sea lion, U.S. Long-beaked common dolphin, CA Northern elephant seal, CA breeding Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA[1]
LONGLINE/SET LINE FISHERIES:		
HI deep-set (tuna target) longline/set line	129	Blainville's beaked whale, HI Bottlenose dolphin, HI Bryde's whale, HI False killer whale, HI[1] Humpback whale, Central North Pacific Pantropical spotted dolphin, HI Risso's dolphin, HI Short-finned pilot whale, HI Spinner dolphin, HI Sperm whale, HI Striped dolphin, HI
CATEGORY II		
GILLNET FISHERIES:		
CA halibut/white seabass and other species set gillnet (>3.5 in mesh)	58	California sea lion, U.S.[1] Harbor seal, CA[1] Long-beaked common dolphin, CA Northern elephant seal, CA breeding Sea otter, CA Short-beaked common dolphin, CA/OR/WA
AK Bristol Bay salmon drift gillnet[2]	1,862	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[2]	983	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Spotted seal, AK

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK Cook Inlet salmon set gillnet	738	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Humpback whale, Central North Pacific[1] Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	571	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA[1] Harbor seal, GOA Steller sea lion, Western U.S.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA[1] Harbor seal, GOA Sea otter, Southwest AK Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet[2]	162	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet[2]	115	Harbor porpoise, Bering Sea Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall's porpoise, AK Harbor porpoise, GOA[1] Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Sea Otter, South Central AK Steller sea lion, Western U.S.[1]
AK Southeast salmon drift gillnet	476	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific[1] Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet[2]	166	Gray whale, Eastern North Pacific Harbor seal, Southeast AK Humpback whale, Central North Pacific (Southeast AK)
CA yellowtail, barracuda, and white seabass drift gillnet fishery (mesh size ≥3.5 in and <14 in)	24	California sea lion, U.S. Long-beaked common dolphin, CA[1] Short-beaked common dolphin, CA/OR/WA
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded)	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA[1] Harbor seal, WA inland

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
PURSE SEINE FISHERIES:		
AK Southeast salmon purse seine	415	Humpback whale, Central North Pacific[1]
AK Cook Inlet salmon purse seine	82	Humpback whale, Central North Pacific[1]
AK Kodiak salmon purse seine	370	Humpback whale, Central North Pacific[1]
CA anchovy, mackerel, sardine purse seine	63	Bottlenose dolphin, CA/OR/WA offshore[1] California sea lion, U.S. Harbor seal, CA
CA squid purse seine	71	Common dolphin, unknown Short-finned pilot whale, CA/OR/WA[1]
CA tuna purse seine[2] *	10	None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands flatfish trawl	34	Bearded seal, AK Harbor porpoise, Bering Sea Harbor seal, Bering Sea Killer whale, AK resident[1] Northern fur seal, Eastern North Pacific Spotted seal, AK Steller sea lion, Western U.S.[1] Walrus, AK
AK Bering Sea, Aleutian Islands pollock trawl	95	Dall's porpoise, AK Harbor seal, AK Humpback whale, Central North Pacific[1] Humpback whale, Western North Pacific[1] Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient[1] Minke whale, AK Ribbon seal, AK Spotted seal, AK Steller sea lion, Western U.S.[1]
LONGLINE/SET LINE FISHERIES:		
HI shallow-set (swordfish target) longline/ set line	28	Bottlenose dolphin, stock unknown Bryde's whale, stock unknown Humpback whale, Central North Pacific[1] Risso's dolphin, stock unknown
AK Bering Sea, Aleutian Islands Pacific cod longline	54	Killer whale, AK resident[1] Ribbon seal, AK Steller sea lion, Western U.S.
CA pelagic longline[2] *	6	California sea lion, U.S. Risso's dolphin, CA/OR/WA
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[1] Humpback whale, Western North Pacific[1]
CA spot prawn pot	29	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
CA Dungeness crab pot[2]	625	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA
OR Dungeness crab pot	433	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
WA/OR/CA sablefish pot	155	Humpback whale, CA/OR/WA[1]
CATEGORY III		
GILLNET FISHERIES:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	824	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	986	None documented
CA set gillnet (mesh size <3.5 in)	304	None documented
HI inshore gillnet	5	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA/OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented
WA/OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
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	0	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK octopus/squid purse seine	0	None documented
AK roe herring and food/bait herring beach seine	4	None documented
AK roe herring and food/bait herring purse seine	361	None documented
AK salmon beach seine	31	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II)	936	Harbor seal, GOA
WA/OR sardine purse seine	42	None documented
HI Kona crab loop net	42	None documented
HI opelu/akule net	12	None documented
HI inshore purse seine	23	None documented
HI throw net, cast net	14	None documented
WA (all species) beach seine or drag seine	235	None documented
WA/OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA/OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA marine shellfish aquaculture	unknown	None documented
CA salmon enhancement rearing pen	>1	None documented
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented
OR salmon ranch	1	None documented
WA/OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries *	1,302 (102 AK)	None documented
AK salmon troll	2,045	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	88	None documented
Guam tuna troll	401	None documented
HI trolling, rod and reel	1,321	None documented
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Greenland turbot longline	29	Killer whale, AK resident
AK Bering Sea, Aleutian Islands rockfish longline	0	None documented
AK Bering Sea, Aleutian Islands sablefish longline	28	None documented
AK Gulf of Alaska halibut longline	1,302	None documented
AK Gulf of Alaska Pacific cod longline	440	None documented
AK Gulf of Alaska rockfish longline	0	None documented
AK Gulf of Alaska sablefish longline	291	Sperm whale, North Pacific Steller sea lion, Eastern U.S.
AK halibut longline/set line (State and Federal waters)	2,521	Steller sea lion, Western U.S.
AK octopus/squid longline	2	None documented
AK State-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish)	1,448	None documented
American Samoa longline	60	None documented
WA/OR/CA groundfish, bottomfish longline/set line	367	None documented
WA/OR North Pacific halibut longline/set line	350	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	9	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	93	Harbor seal, Bering Sea Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands rockfish trawl	10	None documented
AK Gulf of Alaska flatfish trawl	41	None documented
AK Gulf of Alaska Pacific cod trawl	62	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	62	Fin whale, Northeast Pacific Northern elephant seal, North Pacific Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	34	None documented
AK food/bait herring trawl	4	None documented
AK miscellaneous finfish otter or beam trawl	317	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	32	None documented
AK State-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
CA halibut bottom trawl	53	None documented
WA/OR/CA groundfish trawl	160-180	California sea lion, U.S. Dall's porpoise, CA/OR/WA Harbor seal, OR/WA coast Northern fur seal, Eastern Pacific Pacific white-sided dolphin, CA/OR/WA Steller sea lion, Eastern U.S.
WA/OR/CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK statewide miscellaneous finfish pot	293	None documented
AK Aleutian Islands sablefish pot	8	None documented
AK Bering Sea, Aleutian Islands Pacific cod pot	68	None documented
AK Bering Sea, Aleutian Islands crab pot	297	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK Gulf of Alaska crab pot	300	None documented
AK Gulf of Alaska Pacific cod pot	154	Harbor seal, GOA
AK Southeast Alaska crab pot	433	Humpback whale, Central North Pacific (Southeast AK)
AK Southeast Alaska shrimp pot	283	Humpback whale, Central North Pacific (Southeast AK)
AK shrimp pot, except Southeast	15	None documented
AK octopus/squid pot	27	None documented
AK snail pot	1	None documented
CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap	530	Gray whale, Eastern North Pacific Harbor seal, CA
OR/CA hagfish pot or trap	54	None documented
WA Dungeness crab pot	288	Gray whale, Eastern North Pacific
WA/OR shrimp pot/trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	0	Hawaiian monk seal
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline/hand troll and mechanical jig	445	None documented
AK North Pacific halibut handline/hand troll and mechanical jig	228	None documented
AK octopus/squid handline	0	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	200	None documented
HI aku boat, pole and line	4	None documented
HI Main Hawaiian Islands, Northwestern Hawaiian Islands deep sea bottomfish	300	Hawaiian monk seal
HI inshore handline	307	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
HI tuna handline	298	Hawaiian monk seal
WA groundfish, bottomfish jig	679	None documented
Western Pacific squid jig	6	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	30	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	415	None documented
AK Southeast herring roe/food/bait pound net	6	None documented
WA herring brush weir	1	None documented
BAIT PENS:		
WA/OR/CA bait pens	13	California sea lion, U.S.
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	0	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	2	None documented
AK herring spawn on kelp	266	None documented
AK urchin and other fish/shellfish	570	None documented
CA abalone	0	None documented
CA sea urchin	583	None documented
HI black coral diving	1	None documented
HI fish pond	N/A	None documented
HI handpick	37	None documented
HI lobster diving	19	None documented
HI squiding, spear	91	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
WA/CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (2,702 AK)	Killer whale, stock unknown Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
HI charter vessel	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented

List of Abbreviations and Symbols Used in Table 1: AK - Alaska; CA - California; GOA - Gulf of Alaska; HI - Hawaii; OR - Oregon; WA - Washington; [1] - Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] - Fishery classified by analogy; * - Fishery has an associated high seas component listed in Table 3.

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	>670	Bottlenose dolphin, WNA coastal[1] Bottlenose dolphin, WNA offshore Common dolphin, WNA Gray seal, WNA Harbor porpoise, GME/BF[1] Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine[1] 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[1] Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, Gulf of Maine[1] Minke whale, Canadian east coast[1] North Atlantic right whale, WNA[1] Risso's dolphin, WNA White-sided dolphin, WNA
LONGLINE FISHERIES:		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline *	94	Atlantic spotted dolphin, Northern GMX Atlantic spotted dolphin, WNA Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, Northern GMX continental shelf Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA[1] Mesoplodon beaked whale, WNA Northern bottlenose whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Pygmy sperm whale, WNA[1] Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA[1]
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Fin whale, WNA Harbor seal, WNA Humpback whale, Gulf of Maine[1] Minke whale, Canadian east coast[1] North Atlantic right whale, WNA[1]
CATEGORY II		
GILLNET FISHERIES:		
Chesapeake Bay inshore gillnet[2]	45	None documented
Gulf of Mexico gillnet[2]	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
NC inshore gillnet	94	Bottlenose dolphin, WNA coastal[1]
Northeast anchored float gillnet[2]	133	Harbor seal, WNA Humpback whale, Gulf of Maine White-sided dolphin, WNA
Northeast drift gillnet[2]	unknown	None documented
Southeast Atlantic gillnet[2]	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet *	30	Atlantic spotted dolphin, WNA Bottlenose dolphin, WNA coastal[1] North Atlantic right whale, WNA
TRAWL FISHERIES:		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
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[1]
Mid-Atlantic bottom trawl	>1,000	Common dolphin, WNA[1] Long-finned pilot whale, WNA[1] Short-finned pilot whale, WNA[1] White-sided dolphin, WNA
Mid-Atlantic flynet[2]	21	None documented
Northeast mid-water trawl (including pair trawl)	17	Harbor seal, WNA Long-finned pilot whale, WNA[1] Short-finned pilot whale, WNA[1] White-sided dolphin, WNA
Northeast bottom trawl	1,052	Common dolphin, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA[1]
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal[1] West Indian manatee, FL[1]
Atlantic mixed species trap/pot[2]	unknown	Fin whale, WNA Humpback whale, Gulf of Maine
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	40-42	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal[1] Bottlenose dolphin, Western GMX coastal
Mid-Atlantic menhaden purse seine[2]	22	Bottlenose dolphin, WNA coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal[1]
NC long haul seine	33	Bottlenose dolphin, WNA coastal[1]
STOP NET FISHERIES:		
NC roe mullet stop net	13	Bottlenose dolphin, WNA coastal[1]
POUND NET FISHERIES:		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
VA pound net	187	Bottlenose dolphin, WNA coastal[1]
CATEGORY III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
DE River inshore gillnet	60	None documented
Long Island Sound inshore gillnet	20	None documented
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet	32	None documented
Southeast Atlantic inshore gillnet	unknown	None documented
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	972	None documented
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, Northern GMX continental shelf
Gulf of Mexico mixed species trawl	20	None documented
GA cannonball jellyfish trawl	1	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian Manatee, FL
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 seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
FL West Coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
U.S. Atlantic tuna purse seine *	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
LONGLINE/HOOK-AND-LINE FISHERIES:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	46	None documented
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	Humpback whale, Gulf of Maine
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	<125	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX continental shelf
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
U.S. Atlantic, Gulf of Mexico trotline	unknown	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
FL spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, WNA 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	Bottlenose dolphin, WNA coastal
U.S. Mid-Atlantic eel trap/pot	>700	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
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 NC 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
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	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, WNA coastal

List of Abbreviations and Symbols Used in Table 2: DE - Delaware; FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; MA - Massachusetts; NC - North Carolina; VA - Virginia; WNA - Western North Atlantic; [1] - Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] - Fishery classified by analogy; * - Fishery has an associated high seas component listed in Table 3.

Table 3 - List of Fisheries Commercial Fisheries on the High Seas

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed/injured
Category I		
DRIFT GILLNET FISHERIES:		
Pacific Highly Migratory Species * ^	5	Long-beaked common dolphin, CA Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA
LONGLINE FISHERIES:		
Atlantic Highly Migratory Species * +	75	Atlantic spotted dolphin, WNA Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA Mesoplodon beaked whale, WNA Pygmy sperm whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA
Western Pacific Pelagic (Deep-set component) * ^	129	Blainville's beaked whale, HI Bottlenose dolphin, HI Byrde's whale, HI False killer whale, HI Humpback whale, Central North Pacific Pantropical spotted dolphin, HI Risso's dolphin, HI Short-finned pilot whale, HI Spinner dolphin, HI Sperm whale, HI Striped dolphin, HI
Category II		
DRIFT GILLNET FISHERIES:		
Atlantic Highly Migratory Species * ^	1	Atlantic spotted dolphin, WNA
Unspecified	1	Undetermined
GILLNET NEI FISHERIES:		
Pacific Highly Migratory Species	1	Undetermined
TRAWL FISHERIES:		
Atlantic Highly Migratory Species **	3	Undetermined

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed/injured
Pacific Highly Migratory Species **	14	Undetermined
South Pacific Albacore Troll	5	Undetermined
Western Pacific Pelagic	11	Undetermined
Unspecified	22	Undetermined
PURSE SEINE FISHERIES:		
Pacific Highly Migratory Species * ^	5	None Documented
South Pacific Albacore Troll	1	Undetermined
South Pacific Tuna Fisheries	23	Undetermined
Western Pacific Pelagic	4	Undetermined
POT VESSEL FISHERIES:		
Pacific Highly Migratory Species **	8	Undetermined
South Pacific Albacore Troll	5	Undetermined
Western Pacific Pelagic	8	Undetermined
LONGLINE FISHERIES:		
Pacific Highly Migratory Species * +	56	Risso's dolphin, CA/OR/WA
South Pacific Albacore Troll	12	Undetermined
South Pacific Tuna Fisheries **	2	Undetermined
Western Pacific Pelagic (Shallow-set component) * ^	28	Bottlenose dolphin, stock unknown Bryde's whale, stock unknown Humpback whale, Central North Pacific Risso's dolphin, stock unknown
Unspecified	4	Undetermined
HANDLINE/POLE AND LINE FISHERIES:		
Atlantic Highly Migratory Species	2	Undetermined
Pacific Highly Migratory Species	18	Undetermined
South Pacific Albacore Troll	7	Undetermined
Western Pacific Pelagic	8	Undetermined
SEINE-HANDLINE FISHERIES:		
Pacific Highly Migratory Species	1	Undetermined
TROLL FISHERIES:		

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed/injured
Atlantic Highly Migratory Species	5	Undetermined
South Pacific Albacore Troll	45	Undetermined
South Pacific Tuna Fisheries **	1	Undetermined
Western Pacific Pelagic	44	Undetermined
Unspecified	9	Undetermined
LINERS NEI FISHERIES:		
Pacific Highly Migratory Species **	3	Undetermined
South Pacific Albacore Troll	1	Undetermined
Western Pacific Pelagic	2	Undetermined
DREDGE FISHERIES:		
Unspecified	2	Undetermined
FACTORY MOTHERSHIP FISHERIES:		
Western Pacific Pelagic	1	Undetermined
MULTIPURPOSE VESSELS NEI FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
Pacific Highly Migratory Species **	9	Undetermined
South Pacific Albacore Troll	6	Undetermined
Western Pacific Pelagic	7	Undetermined
FISHING VESSELS NEI FISHERIES:		
Pacific Highly Migratory Species **	2	Undetermined
South Pacific Albacore Troll	1	Undetermined
Western Pacific Pelagic	2	Undetermined
Category III		
TROLL FISHERIES:		
Pacific Highly Migratory Species *	222	None documented
PURSE SEINE FISHERIES:		
Atlantic Highly Migratory Species * ^	1	Long-finned pilot whales, WNA Short finned pilot whales, WNA

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

GMX- Gulf of Mexico.
NEI - Not Elsewhere Identified;.
Unspecified - Identifies the number of valid high seas permits for a fishery that, as of 2004, is no longer authorized under the High Seas Fishery Compliance Act (HSFCA). Once these permits expire (valid for 5 years), fishers will be required to obtain a permit for one of the seven currently authorized HSFCA fisheries to continue to fish on the high seas.
WNA - Western North Atlantic.
* - Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.
** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for five years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.
+ -The marine mammal species or stock listed as killed/injured in this fishery has been observed taken by this fishery on the high seas.
^ - The list of marine mammal species killed/injured in this fishery is identical to the list of marine mammal species killed/injured in U.S. waters component of the fishery, minus coastal stocks, because the marine mammal species are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the fisheries operating in U.S. waters.

Table 4 - Fisheries Affected by Take Reduction Teams and Plans

Take Reduction Plans	Affected Fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP) - 50 CFR 229.32	Category I Mid-Atlantic gillnet Northeast/Mid-Atlantic American lobster trap/pot Northeast sink gillnet Category II Atlantic blue crab trap/pot Atlantic mixed species trap/pot Northeast anchored float gillnet Northeast drift gillnet Southeast Atlantic gillnet Southeastern U.S. Atlantic shark gillnet
Bottlenose Dolphin Take Reduction Plan (BDTRP) - 50 CFR 229.35	Category I Mid-Atlantic gillnet Category II Atlantic blue crab trap/pot Mid-Atlantic haul/beach seine NC inshore gillnet NC long haul seine NC roe mullet stop net Southeast Atlantic gillnet Southeastern U.S. Atlantic shark gillnet VA pound net
Harbor Porpoise Take Reduction Plan (HPTRP) - 50 CFR 229.33 and 229.34	Category I Mid-Atlantic gillnet Northeast sink gillnet
Pacific Offshore Cetacean Take Reduction Plan (POCTRP) - 50 CFR 229.31	Category I CA/OR thresher shark/swordfish drift gillnet (≥ 14 in mesh)
Take Reduction Teams	Affected Fisheries
Pelagic Longline Take Reduction Team (PLTRT)	Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	Category II Mid-Atlantic Bottom Trawl Mid-Atlantic Mid-Water Trawl (Including Pair Trawl) Northeast Bottom Trawl Northeast Mid-Water Trawl (Including Pair Trawl)

For a description of each Take Reduction Team and copies of Take Reduction Plans, access: http://www.nmfs.noaa.gov/pr/interactions/trt/

Table 5- Reports of Entangled Humpback Whales, January 1, 2002 - December 31, 2006

CONFIRMED ENTANGLEMENT IN TRAP OR POT GEAR		
Date	Area	Fishery (if known) and whale's condition
August 12, 2005	Channel Islands	Entangled with crabpots running through mouth- seriously injured
September 26, 2005	Monterey Bay	Entangled in spot prawn gear- seriously injured
December 11, 2005	San Francisco area	Entangled with 12 pots and lines- seriously injured
September 3, 2006	Monterey Bay	Entangled in sablefish gear, disentangled by divers- not seriously injured
UNCONFIRMED, BUT PROBABLE ENTANGLEMENT IN TRAP OR POT GEAR		
May 24, 2006	Charleston, OR	Entangled in crab pot gear, stranded on beach - mortality (carcass found near Garnier, OR on May 28, 2006)
UNCONFIRMED, BUT POSSIBLE ENTANGLEMENT IN TRAP OR POT GEAR		
March 29, 2003	Monterey Bay	Crabpot line and white float- seriously injured
August 31, 2003	San Francisco area	Crabpot line with floats- seriously injured
June 29, 2006	San Mateo	Unidentified pot/trap gear- seriously injured
CANNOT BE DETERMINED		
May 27, 2003	Channel Islands	100 ft (330 m) of polypropylene line around fins- seriously injured
November 24, 2003	Humboldt	Line wrapped around body- seriously injured
November 28, 2003	Del Norte	Line wrapped around body- seriously injured
May 23, 2004	Monterey Bay	While rope wrapped around body- seriously injured
April 25, 2006	Channel Islands	net/rope fragment seen on animal- seriously injured

BILLING CODE 3510–22–C

Classification

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

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA and obtain an Authorization Certificate. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. Additionally, fishers may be subject to a Take Reduction Plan (TRP) and requested to carry an observer. NMFS has estimated that approximately 44,200 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register with NMFS. Each region has integrated the MMPA registration process with existing state and Federal registration programs. Fishers who have a Federal or state fishery permit or landing license, or who are authorized through another related Federal or state fishery registration program, are currently not required to register separately under the MMPA or pay the $25 registration fee under the MMPA. Therefore, there are no direct costs to small entities under this proposed rule.

If a vessel is requested to carry an observer, fishers will not incur any direct economic costs associated with carrying that observer. Potential indirect costs to individual fishers required to take observers may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. For effective monitoring, however, observers will rotate among a limited number of vessels in a fishery at any given time and each vessel within an observed fishery has an equal probability of being requested to accommodate an observer. Therefore, the potential indirect costs to individual fishers are expected to be minimal because observer coverage would only be required for a small percentage of an individual's total annual fishing time. In addition, section 118 of the MMPA states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and was not prepared. In the event that reclassification of a fishery to Category I or II results in a TRP, economic analyses of the effects of that plan will be summarized in subsequent rulemaking actions.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal injuries or mortalities has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

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

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

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA in June 1995. NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 EA and the 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This proposed rule would not make any significant change in the management of reclassified fisheries, and therefore, this proposed rule is not expected to change the analysis or conclusion of the 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 proposed 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 proposed rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under ESA section 7 for that action.

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

This proposed 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: June 9, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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