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50 CFR Part 229
List of Fisheries for 2009; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 080204115–8832–02]

RIN 0648–AW48

List of Fisheries for 2009

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2009, as required by the Marine Mammal Protection Act (MMPA). The final 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: This final rule is effective on January 1, 2009.

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

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this final 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 e-mail to *David_Rostker@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Melissa Andersen, Office of Protected Resources, 301–713–2322; David Gouveia, Northeast Region, 978–281–9328; Laura Engleby, 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 incidental serious injury of mortality is ''occasional'' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or 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). Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published.

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 Web site 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 Web site: *http://www.st.nmfs.gov/st4/nop/*.

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

This final 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?

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Sea Fishing Compliance Act (HSFCA) permits in each fishery. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 by an ''*'' after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters 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.

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 fisher 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 fisher can obtain a high seas permit prior to obtaining any necessary MSA permits. Similarly, a fisher 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 final 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 does 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 type (e.g., trawl, longline, purse seine, gillnet, troll, etc.), as listed on each fisher's permit application, to provide more detail on composition of effort within these fisheries.

How Does 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.

For this reason, NMFS categorizes the majority of high seas fisheries on the LOF as Category II. As discussed previously in this preamble, Category II is the appropriate category for commercial fisheries not currently on the LOF (e.g., new fisheries) and for which NMFS does not have adequate information to indicate the frequency of incidental mortality and serious injury. Classifying a fishery in Category II allows NMFS to place observers on vessels in that fishery, providing NMFS the opportunity to obtain information needed to assess the frequency of bycatch in that fishery. For fisheries that operate both within U.S. waters and on the high seas, the high seas component of the fishery is classified according to the fishery's status in U.S. waters because it is not a separate fishery, but an extension of the fishery. Therefore, for a Category I or Category III fishery operating within U.S. waters, the high seas component would also be classified as Category I or Category III, accordingly. NMFS will continue to gather available information on the authorized high seas fisheries and reclassify fisheries in Table 3, if necessary, as more information becomes available.

How Does 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 or 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 are designated as ''undetermined'' until additional information on marine mammal populations and fishery interactions on the high seas becomes available.

For high seas fisheries that are extensions of fisheries operating within U.S. waters, as discussed above, Table 3 lists the same marine mammal species killed or injured in the high seas components of fisheries (excluding coastal species that would not be found on the high seas) as those killed or injured by the component of the fishery operating within U.S. waters (Tables 1 and 2). NMFS assumes that these vessels pose the same risk to the species on both sides of the Exclusive Economic Zone (EEZ) boundary. 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 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 that participate in Pacific Islands, Northwest, or Alaska regional fisheries will receive their authorization certificates and/or injury/mortality

reporting forms via U.S. mail, or with their State or Federal license at the time of renewal. Vessel or gear owners participating in Southwest regional fisheries or 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/mmap/certificate.html*) 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.

3. Southwest Region vessel or gear owners participating in Category I or II fisheries listed in the final 2008 LOF (72 FR 66048, published November 27, 2007) will receive their authorization certificate and/or injury/mortality reporting form as described above in the integrated MMPA registration process. A number of California state fisheries are being re-categorized as Category II fisheries in this final rule, and NMFS is working with the State of California to streamline the process of registering vessel or gear owners participating in these fisheries and issuing authorization certificates, as required under MMPA section 118. Fishermen may contact the Southwest Regional Office at 562–980–4025 for more information. The Southwest Region plans to fully integrate all California State Category I and II fisheries for the 2009/2010 fishing season.

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. MMPA Section 118 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. 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. Table 4 in this final rule provides 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 Final 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. The 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 marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

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

The final 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 (73 FR 40299, July 14, 2008). The SARs are available at: *http://www.nmfs.noaa.gov/pr/sars/*.

Fishery Descriptions

NMFS described each Category I and II fishery on the 2008 LOF in the final 2008 LOF (72 FR 66048, November 27, 2007). Below, NMFS describes the fisheries classified as Category I or II fisheries on the 2009 LOF that were not so categorized on the 2008 LOF. 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 virtually the same as 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 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. Atlantic waters, HMS commercial fishers use several gear types. Authorized gear for tuna include 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 and must remain attached to the vessel except during net checks. 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 by federally permitted vessels. 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 (Table 3) are extensions of various Category I, II, and III fisheries operating in U.S. waters (Table 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 has issued proposed regulations to implement the Pelagic Longline Take Reduction Plan (PLTRP) for this fishery (73 FR 35623, June 24, 2008). The gillnet fishery targeting Atlantic HMS in U.S. waters is the Category II, ''Southeastern U.S. Atlantic shark gillnet'' fishery. In U.S. waters only, 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. The use of shallow set longline gear to target HMS east of 150° W. long. is prohibited under a rule promulgated through the ESA to protect threatened loggerhead sea turtles.

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 CRF 229.31), both in U.S. waters and on the high seas. 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, and all nets have operational pingers to a water depth of a least 100 fathoms (600 ft; 182.9 m). Also, after notification from NMFS, 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 within U.S. waters, the Category I ''CA/OR thresher shark/swordfish drift gillnet (≥14 in. 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 HMS caught outside U.S. waters, but landed into the U.S. West coast. The troll

fishery targeting Pacific HMS within U.S. waters is the 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 Western 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 gear types 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'' operating within U.S. waters. All requirements for vessels fishing longline gear in these two fisheries operating 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 land catch in American Samoa, Fiji, or Tahiti.

The South Pacific albacore troll fishery is not managed by regulations implementing any FMP. The WPFMC and NMFS have concluded that conservation and management measures for this fishery are not warranted because the albacore 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 be able to avoid a collision with a large 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/*).

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 to the Treaty, 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 was intended to apply only to U.S. purse seine vessels; however, provisions have been made to accommodate 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 of 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 SPTT 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 SPTT 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; and mesh sizes restrictions for trawl gear. Recommendations include seal bycatch mitigation measures, such as a seal excluder device in trawl fisheries.

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 Fishery

The Category II ''CA spot prawn pot fishery'' 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 allows 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 the 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 Fishery

The Category II ''CA Dungeness crab pot fishery'' operates in 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 fished singly, or individually, such that each pot has its own buoy; although, fishing multiple traps connected together (called ''strings'') is allowed in the central region. There is no limit on the number of traps which may be operated by a fisher at one time. This is a limited access fishery managed by the state of CA and pursuant to 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 fishing season in the central region (south of the Mendocino-Sonoma county line) is open November 15–June 30. The fishing season in 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 based on the condition of market crabs, and continues until July 15.

OR Dungeness Crab Pot Fishery

The Category II ''OR Dungeness crab pot fishery'' operates in the coastal waters of OR in depths typically from 10–40 fathoms. The cylindrical or rectangular pots used in the fishery are fished singly, or individually, such that each pot has its own buoy. This is a limited access fishery managed by the OR Department of Fish and Wildlife and pursuant to the Tri-State Committee agreement for Dungeness crab, which also includes the states of CA and WA. A three-tiered pot limitation system, based on previous landing history, allows a maximum 200, 300, or 500 single pots to be fished by a fisher at once. The Dungeness crab season runs from December 1–August 14, although the Oregon Department of Fish and Wildlife may delay the opening based on the condition of the market crabs. Additionally, the state may close the season after the end of May, if catch rates are still high, to protect molting crab. Logbook reporting of effort and catch data to the state is required.

WA/OR/CA Sablefish Pot Fishery

The Category II ''CA/OR/WA sablefish pot fishery'' operates 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. As with most pot gear fished out in deeper waters, sablefish traps are set in strings of multiple traps. 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 fisher 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.

Comments and Responses

NMFS received 10 comment letters on the proposed 2009 LOF (73 FR 33760, June 13, 2008). Comments were received from the Marine Mammal Commission, Center for Biological Diversity (CBD), Western Pacific Regional Fishery Management Council (WPFMC), Mid-Atlantic Fishery Management Council (MAFMC), North Carolina Division of Marine Fisheries (NCDMF), Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG), Garden State Seafood Association, Hawaii Longline Association (HLA), and California Wetfish Producers Association. Comments on issues outside the scope of the LOF were noted, but are not responded to in this final rule.

General Comments

Comment 1: The Marine Mammal Commission reiterated comments made on the 2005 through 2008 LOFs recommending that NMFS describe the level of observer coverage for each fishery as part of the LOF. NMFS indicated in its response to the comments on the 2008 LOF that it ''feels that it will be of limited use to include observer coverage data or percentages in the LOF without also including the confidence associated with mortality/serious injury estimates generated from the observer data.'' The Commission would welcome inclusion of information on mortality and serious injury estimates within the LOF, as they recommended in comments on the 2005 LOF that such information be included. The Commission continues to believe observer coverage information is important in itself, particularly for evaluating cases where no marine mammal interactions are reported. Fisheries without recorded interactions are not reported in the SARs and, without information on observer coverage, it is impossible to determine whether a given fishery was adequately observed and no marine mammals were taken or the fishery was not adequately observed and mortality and serious injury may have occurred but were not documented.

Response: NMFS continues to feel that the LOF is not the appropriate venue for reporting this data because it will confuse rather than clarify if presented without all the associated information supplied in the SARs. However, NMFS agrees that observer coverage information would be useful for the reader to reference when determining whether a given fishery was adequately observed and no marine mammals were taken or the fishery was not adequately observed and mortality and serious injury may have occurred but were not documented. Therefore, NMFS is exploring other options for providing information on observer coverage as it applies to the LOF and will notify readers of these sources in subsequent LOFs. In addition, NMFS is preparing to release the National Bycatch Report (NBR). The NBR will provide a comprehensive summary of regional and national bycatch estimates, based on observer data and fisher reports, of fish, marine mammals, sea turtles, and sea birds in U.S. commercial fisheries that have a Federal nexus. The NBR will include observer coverage information that can be referenced while reviewing the LOF. NMFS also continues to refer readers to the SARs and the National Observer Program for information on observer coverage. The SARs can be accessed through the NMFS Office of Protected Resource's Web site at: *http://www.nmfs.noaa.gov/pr.sars/.* Additional information can also be found on the National Observer Program Web site at: *http://www.st.nmfs.gov/st4/nop/.*

Comment 2: The CBD noted that the proposed 2009 LOF lists over 40 fisheries that are known to interact with ESA-listed marine mammals. Only one fishery, the Category I ''CA/OR thresher shark/swordfish drift gillnet fishery,'' has authorization to take ESA-listed marine mammals. Each of these other fisheries is therefore operating in violation of both the ESA and MMPA. NMFS must either issue permits for these fisheries authorizing take under these statutes, or take appropriate enforcement action, including, as necessary, closure of the fisheries, to ensure such illegal take does not continue to occur.

Response: CBD's comment refers to how NMFS authorizes takes of ESA-listed marine mammals incidental to commercial fishing. The MMPA requires fishers to obtain a permit granted under section 101(a)(5)(E) of the MMPA if they participate in a fishery that takes ESA-listed marine mammals. A 101(a)(5)(E) permit does not authorize the operation of a fishery. Instead, a 101(a)(5)(E) permit authorizes the incidental take of ESA-listed marine mammals in commercial fisheries, if certain provisions are met. Any incidental take of an ESA-listed species in an otherwise legally-operating fishery, without a 101(a)(5)(E) permit, is not authorized. If an ESA-listed species is taken by a fisher in a fishery that has not been granted a MMPA 101(a)(5)(E) permit, then the fisher may be subject to enforcement proceedings.

NMFS acknowledges that the LOF includes fisheries in which ESA-listed species are listed as incidentally killed/injured, but for which NMFS has not issued a permit under section 101(a)(5)(E) of the MMPA. To issue a permit under section 101(a)(5)(E) of the MMPA, NMFS must determine that (1) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stocks; (2) a recovery plan has been developed or is being developed for such species or stock pursuant to the ESA; and (3) where required under section 118 of the MMPA, a monitoring program is established, vessels engaged in such fisheries are registered, and a take reduction plan has been developed or is being developed for such species or stock. NMFS is in the process of making these determinations in various fisheries on the LOF.

Comment 3: The CBD noted that the proposed 2009 LOF includes a table of fisheries subject to take reduction teams (TRT). This is very useful. However, numerous Category I and II fisheries not yet subject to TRTs also meet the statutory criteria for convening such teams. All Category I and II fisheries not yet subject to TRTs which interact with strategic stocks must have TRTs promptly convened. The Hawaii pelagic longline fishery should be the highest priority for such a team as take continues to exceed PBR for false killer whales.

Response: Please see comment/response 6 in the final 2008 LOF (72 FR 66048, November 27, 2007). At this time, NMFS' resources for TRTs are fully utilized and new TRTs will be initiated when additional resources become available. When NMFS lacks sufficient funding to convene a TRT for all stocks that interact with Category I and II fisheries, NMFS will give highest priority for developing and implementing new take reduction plans to species or stocks whose level of incidental mortality and serious injury exceeds PBR, those with a small population size, and those which are declining most rapidly, pursuant to MMPA section 118(f)(3).

Comment 4: The CBD stated concerns regarding groups of ''fisheries'' that NMFS has excluded from the LOF. In the final rule implementing section 118 of the MMPA (60 FR 45086, August 20,

1995), NMFS concluded that tribal fisheries were exempt from the permitting requirements the MMPA. In light of the subsequent holding of the Ninth Circuit in *Anderson* v. *Evans,* 371 F.3d 475 (9th Cir. 2002) finding that the MMPA applies to the Makah application to the gray whale hunt, the CBD believes that NMFS' 1995 conclusion exempting tribal fisheries from the LOF and the Section 118 authorization process is no longer valid. The 2009 LOF should be amended to include tribal fisheries.

Response: NMFS will consider this comment during the development of future proposed LOFs.

Comment 5: The CBD does not believe aquaculture facilities are properly considered commercial fishing operations eligible for the take authorization contained in MMPA section 118. These facilities and activities, to the degree they interact with marine mammals, should be subject to the take prohibitions and permitting regimes contained in MMPA section 101.

Response: Eight aquaculture fisheries are listed on the MMPA LOF, all as Category III fisheries. NMFS' regulations implementing section 118 of the MMPA (50 CFR 229) specifically include aquaculture as a commercial fishing operation. The regulations in 50 CFR 229.2 define ''commercial fishing operation'' as ''the catching, taking, or harvesting of fish from the marine environment * * * The term includes * * * aquaculture activities.'' Further, ''fishing or to fish'' is defined as ''any commercial fishing operation.''

Comment 6: The WPFMC continues to be concerned that no recreational fishing activities are assessed under the LOF, although recreational fisheries may have a much greater impact on marine mammal stocks than their commercial counterparts. This seems a rather arbitrary application of the MMPA to marine fisheries.

Response: NMFS agrees there are documented cases of incidental injury or death of marine mammals in recreational fishing gear. However, MMPA section 118 governs the ''Taking of Marine Mammals Incidental to Commercial Fishing Operations.'' Specifically, section 118(c)(1)(A) directs NMFS to ''publish * * * list of commercial fisheries'' that interact with marine mammals.

Comments on High Seas Fisheries

Comment 7: The CBD supported NMFS' decision to include high seas fisheries on the LOF, but they have concerns with how NMFS is implementing the process. NMFS treats fisheries that have both a high seas and within-EEZ component as two separate fisheries for LOF purposes. CBD believes this raises the risk that the total marine mammal take from such a fishery may be inappropriately apportioned into two separate fisheries (the high seas and non-high seas components), therefore resulting in an underestimation of the true environmental effect, and LOF classification of what is more properly considered the same fishery. For example, if the total take from a fishery operating both in and outside the EEZ is 60 percent of PBR, the fishery should be a Category I. However, if the fishery is split into two components and take is evenly apportioned, the total take from each fishery is only 30 percent of PBR, and therefore a Category II. NMFS must clarify how it will apportion take so as to not create this problem.

Response: Although the high seas components of fisheries that operate both within U.S. waters and on the high seas are listed in a separate table in the LOF, they are not considered separate fisheries from their associated components operating in U.S. waters. Instead, NMFS considers these fisheries as the same fishery that has extended beyond the 200 nmi boundary of the EEZ. Because of the organization and format of Tables 1 and 2 in the LOF, and because high seas fisheries have additional management (permit) requirements, it is necessary to list them on a separate table on the LOF (Table 3). NMFS clarifies which fisheries in Table 3 are extensions of fisheries operating in U.S. waters by placing a ''*'' after the fishery name. NMFS will not apportion any incidental serious injury or mortality in these fisheries separately for purposes of categorization. Takes on either side of the EEZ boundary are included as takes in one fishery. As stated in the preamble of this rule, NMFS does not calculate PBR estimates for marine mammals stocks on the high seas. Therefore, at this time, the high seas fisheries that are extensions of fisheries operating within U.S. waters, are categorized the same as the component operating within U.S. waters.

Comment 8: The Marine Mammal Commission concurred with NMFS' decision to describe and evaluate high seas fisheries and include them on LOF. Doing so makes the LOF more nearly complete and more consistent with the scope of the MMPA. The descriptions and evaluations of high seas fisheries highlight the lack of data on both the status and the incidental take of marine mammals outside the U.S. EEZ, and information on status and incidental take of marine mammals in foreign and international fisheries often is not available. To address this need, the Commission recommends that NMFS develop and implement research and monitoring programs needed to manage high seas fisheries in a manner consistent with the requirements of the MMPA. Such approaches likely will require novel stock assessment techniques and development of international partnerships. This task may be difficult, but also will provide many ancillary benefits, including the development of useful tools for managing transboundary stocks.

Response: NMFS acknowledges this comment. The development of a research and monitoring plan to manage high seas fisheries in a manner consistent with the requirements of the MMPA will require novel stock assessment techniques and the development, and/or continuation, of international partnerships. NMFS will consider such stock assessment techniques and components of a research and monitoring program while continuing to include high seas fisheries on future LOFs.

Comment 9: The CBD noted that NMFS proposed to categorize all high seas fisheries operating in the CCAMLR region as Category II. However, NMFS also states that because there are no currently valid HSFCA permits for CCAMLR fisheries, none of these fisheries will actually be listed in the LOF. Given such fisheries are authorized under existing CCAMLR regulations, NMFS should either list these fisheries on the LOF, or clearly indicate that NMFS will not issue any authorizations for these fisheries during the duration of the time in which the 2009 LOF is operative. If NMFS does include CCAMLR fisheries on the LOF, the trawl fishery for krill should be listed as a Category I based on observer data from three CCAMLR vessels, including a U.S. flagged vessel, indicated that 95 fur seals were caught in 2004/2005 season and 156 fur seals were caught in the 2003/2004 season (71 FR 39642; July 13, 2006). Also, the Final Programmatic EIS for CCAMLR fisheries noted that a U.S.-flagged krill vessel killed 138 Antarctic fur seals in five weeks in 2004. This fishery is clearly not operating as at ''zero mortality and serious injury rate'' and must be listed as a Category I.

Response: NMFS did propose to add CCAMLR fisheries to the LOF as Category II fisheries, but because there were no current valid HSFCA permits NMFS stated that, ''CCAMLR fisheries do not appear in Table 3'' of the proposed 2009 LOF (72 FR at 33770). After considering this comment, NMFS

views the addition of the CCAMLR fisheries to the LOF without representing them in Table 3 as confusing. Therefore, NMFS has added the trawl and longline CCAMLR fisheries (the fisheries in which U.S. vessels have participated in the recent past) to Table 3 with a ''0'' indicating the number of HSFCA permits for each fishery. If/when a permit is issued for a U.S. vessel to operate in a CCAMLR fishery in the future, the number of HSFCA permits listed in Table 3 of the LOF will be updated accordingly.

The CCAMLR trawl fishery for krill does not qualify as a Category I fishery. To be considered Category I, a fishery must have a serious injury or mortality rate of marine mammals at greater than 50 percent of a stock's PBR level. While NMFS does not have sufficient information to calculate PBR level for marine mammal stocks found outside of the U.S. waters, there is available information on the abundance of Antarctic fur seals. The relative abundance of Antarctic fur seals was estimated as 1.5 million in 1990 and is thought to have since increased to over 4 million (CCAMLR Final Programmatic EIS, October 2006). Further, at the 2006 Antarctic Treaty Consultative Meeting, the Antarctic Treaty Parties delisted the Antarctic fur seal from its listed of Specially Protected Species. The delisting reflected the much-increased abundance of fur seals. Ninety-five fur seals were reported caught during fishing operations in 2005/2006, during which time no U.S. krill trawl vessel was operating. In 2003/2004, a total of 158 Antarctic fur seals were observed taken by the single U.S.-permitted trawl krill fishing vessel in the CCAMLR region, 142 of which were mortalities. As a result, a permit provision was added requiring the use of a seal excluder device and any other gear modifications or fishing practice that reduces or eliminates Antarctic fur seal bycatch. In the 2004/2005 fishing season the U.S. vessel used the required seal excluder device; and, as a result, 24 Antarctic fur seals were incidentally taken, 16 of which were mortalities (2005 Report of the CCAMLR Scientific Committee). This modification would be a requirement of any CCAMLR fishing permit NMFS would issue to the vessel. Given the large estimated abundance of Antarctic fur seals, the current low rate of incidental serious injury and mortality would likely be well below 50 percent of PBR if NMFS were to calculate a PBR for this stock. Therefore, the fishery does not qualify as a Category I fishery.

Comment 10: The WPFMC agreed that, from a ''best science'' perspective, it is logical to include high seas fishing activity by U.S. vessels on the LOF because the EEZ boundaries are an artificial construct which have no meaning biologically or ecologically. However, it seems excessive to categorize the majority of high seas fisheries as Category II in the absence of reliable data, even if this is done with the objective of collecting information through the use of observers. Further, it is one-sided, since in the absence of stock assessments, the only information that would be collected would be interactions. The numbers of interactions, even if substantial, will be meaningless without stock assessments against which to assess interactions. Moreover, the HI pelagic longline vessels already carry observers and report marine mammal interactions. Indeed, the observer coverage rates in HI's longline fishery are very high (shallow set-100 percent; deep set-20 percent), and the American Samoa longline fishery has a 7–8 percent average coverage rate.

Response: At this time, NMFS has little information with which to base a Category I or III categorization for many high seas fisheries that are not extensions of fisheries operating within U.S. waters. It is for this reason that NMFS categorizes the majority of high seas fisheries as Category II, the appropriate category for new fisheries for which NMFS does not have adequate information to accurately categorize (as stated in the final rule implementing section 118 of the MMPA 60 FR 45086; August 30, 1995). Because interactions information alone, without the associated marine mammal abundance data, is of limited use in accurately categorizing a fishery on the LOF, NMFS would consider all available abundance data along with interactions data when determining whether the reclassification of a given fishery is warranted. Observer coverage in the HI longline fisheries is high, and the American Samoa longline fishery also has adequate observer coverage. The addition of the high seas components of these fisheries will not impact observer coverage levels or the categorization of these fisheries at this time.

Comment 11: The HLA stated that NMFS should use fishery- and marine mammal-specific information to classify high seas fisheries according to their interactions and, where such information is not available, should designate high seas fisheries as Category II regardless of the classification of their U.S. EEZ components. As a general rule, it may be appropriate to assume that high seas fisheries using the same gear and operational strategies will have similar interaction rates if marine mammals occur in equal numbers on the high seas fishing grounds. However, where equal numbers are not expected or where fishing techniques and gear vary from within-EEZ practices, NMFS should assume that the high seas fishery is a Category II until specific information is available warranting a different classification. In particular, recent reports call into question the assumption that the HI deep-set (tuna target) fishery interacts with non-coastal marine mammals to the same extent as the U.S. waters fishery. First, several species listed in Table 3, including sperm whales and several species of dolphin, have not interacted with the high seas fishery for at least the past five years. Second, a 2007 Southwest Fisheries Science Center Report indicates that false killer whale density and abundance are greater on the high seas south of HI and even greater in the EEZ around Palmyra Atoll, showing that they may be sufficiently abundant on the high seas that already low deep-set fishery interaction rates may warrant something less than a Category I classification for the high seas component.

Response: As stated in the response to comment 7 above, although the high seas components of fisheries that operate both within U.S. waters and on the high seas are listed in a separate table in the LOF, they are not considered a separate fishery from their associated component operating in U.S. waters. Instead, these high seas fisheries, indicated by a ''*'' in Table 3, are the same fisheries that extend into the high seas, not a separate fishery.

As stated in the preamble of this rule, a fishery is categorized based on the stock(s) incidentally seriously injured or killed at the highest levels relative to the stock-specific PBR level (i.e., driving stocks identified by a ''1'' in Tables 1 or 2). Since the high seas ''Western Pacific pelagic deep-set longline fishery'' is an extension of the ''HI deep-set (tuna target) fishery'' operating in U.S. waters, and not a separate fishery, it is categorized in the same manner as the component in U.S. waters (i.e., based on the serious injury and mortality of false killer whales (HI stock), the stock driving the categorization of this fishery). Also, as noted in the preamble of this rule, a fishery is categorized on the LOF at its highest level of classification (e.g., a fishery qualifying for Category II for one marine mammal stock and a Category I for another stock, will be listed as Category I). If NMFS received information indicating that the high seas component of a fishery operates significantly different than the

component operating within U.S. waters, NMFS would consider splitting that fishery into two fisheries at that time. Fisheries that operate solely on the high seas will remain categorized as Category II until additional information on marine mammal abundance and/or fishery interaction data becomes available to warrant a recategorization.

Also, the calculations of PBR levels are reported in the SARs. NMFS uses the PBR levels reported in the SARs in the fishery categorization process under the LOF. PBR and interaction levels are not calculated through the LOF rulemaking process. Therefore, NMFS recommends that the commenter present this comment regarding greater false killer whale abundance on the high seas south of HI and around Palmyra and Johnston Atolls during the comment period for the SARs.

Comments on Fisheries in the Pacific Ocean

Comment 12: The HLA requested that NMFS clarify in the final LOF whether longline fishing in U.S. waters around Palmyra Atoll, Johnston Atoll, and other U.S. Possessions in the Pacific is considered part of the Western Pacific Pelagic deep-set fishery or a separate longline fishery. NMFS should clarify this particularly because false killer whale stock estimates exist for Palmyra Atoll and Johnston Atoll and could be used to derive a PBR that could be measured against observer data for longline fishing in those waters.

Response: NMFS considers U.S. vessels deep-set longline fishing in U.S. waters around Palmyra Atoll, Johnston Atoll, and other U.S. Territories in the Pacific Ocean as operating in the same fishery, the ''HI deep-set (tuna target) fishery'' (and/or its high seas component, the ''Western Pacific pelagic deep-set longline''). NMFS recognizes that the HI stock of false killer whales is distinct from the stock of false killer whales that resides around Palmyra and Johnston Atolls and that a PBR does not currently exist for these animals. However, since this is the same fishery throughout its operating range, calculating a PBR for the false killer whales residing around Palmyra and Johnston Atolls would not impact the classification of the fishery. As noted in the preamble of this rule and in the response to Comment 11 above, a fishery is categorized on the LOF at its highest level of classification (e.g., a fishery qualifying for Category II for one marine mammal stock and a Category I for another stock, will be listed as Category I). Therefore, the fishery would remain in Category I based on the level of incidental mortality and serious injury exceeding PBR of the HI stock of false killer whales (i.e., the stock driving the classification of this fishery).

As stated in the response to Comment 11 above, PBR levels are reported in the SARs. NMFS uses the PBR levels reported in the SARs in the fishery categorization process under the LOF. PBR and interaction levels are not calculated through the LOF rulemaking process. Therefore, NMFS recommends that the commenter present this comment that a PBR could be derived for false killer whales residing around Palmyra and Johnston Atolls during the comment period for the next draft SAR.

Comment 13: The CBD stated that various Hawaiian fisheries are known or suspected of interacting with Hawaiian monk seals. Given the critically endangered status of the monk seal, any interaction is significant. Yet all Hawaiian fisheries known or suspected of interactions and entanglements with this species are listed as Category III. These fisheries should all be reclassified as Category I or II.

Response: The LOF lists the Hawaiian monk seal on the list of species killed/injured in the Category III ''HI lobster trap,'' ''HI Main Hawaiian Islands, Northwestern Hawaiian Islands deep sea bottomfish,'' and the ''HI tuna handline'' fisheries. The information on Hawaiian monk seal interactions with these fisheries is outlined below.

(1) ''HI lobster trap fishery'': There have not been any reported interactions since the mid-1980s, when one seal died in a trap.

(2) ''HI Main Hawaiian Islands, Northwestern Hawaiian Islands deep sea bottomfish fishery'': There were no interactions during the bottomfish observer program in 2004–2005, and the fishery has not been observed since. While fishing in the Northwestern Hawaiian Islands will be phased out in the coming years, in previous years when more bottomfish boats were fishing in this area, NMFS received one self-reported incident (a hooking in 1994) and bottomfish hooks were observed in two seals at the French Frigate Shoals (one in 1982 and one in 1993). NMFS also had reports from the mid 1990's of seals stealing catch, seals being fed bait or non-target species by fishers to discourage seals from taking catch, and some seals becoming hooked and cut free.

(3) ''HI Tuna handline fishery'': NMFS has never received a report of interactions between Hawaiian monk seals and tuna handline gear.

While there have been no observed or reported interactions between monk seals and the ''HI lobster trap'' and ''HI Main Hawaiian Islands, Northwestern Hawaiian Islands deep sea bottomfish'' fisheries in recent years, NMFS has retained Hawaiian monk seals as a species/stock incidentally killed/injured in these fisheries because monk seals in the Main Hawaiian Islands are hooked and entangled at a rate that has not been reliably assessed. The 2007 SAR states that without a purpose-designed observation effort, the true interactions rate between these fisheries and monk seals cannot be estimated. Also, the PBR level for monk seals is currently ''undetermined'' (Final 2007 SAR). Due to the fact that the PBR level for monk seals is undetermined and the hooking and entanglement rate cannot be reliably assessed, NMFS will retain the ''HI lobster trap'' and ''HI Main Hawaiian Islands, Northwestern Hawaiian Islands deep sea bottomfish'' fisheries as Category III fisheries on the LOF until more information becomes available to determine whether reclassification is warranted.

NMFS is removing the Hawaiian monk seal from the list of species/stocks killed/injured in the ''HI tuna handline fishery,'' under which the stock has been listed since the 1996 LOF. As stated above, NMFS has never received a report of interactions between monk seals and tuna handline gear. In a thorough review of all of the past and current Hawaiian monk seal SARs, NMFS was unable to determine the reason for this stock's inclusion on the list of species/stocks killed/injured in this fishery. Therefore, NMFS removes the stock from the list of species/stocks killed/injured in the ''HI tuna handline fishery.''

Comment 14: The CBD stated that observer data from the American Samoa longline fishery shows high levels of take of false killer whales. This fishery should be listed as Category I rather than Category III.

Response: NMFS analyzes observer data and applies observed takes against calculated PBR levels during the process of updating and publishing the annual SARs. The LOF then categorizes fisheries based on the most recent SARs (including observer documented interactions, stranding data, and other data reported in the SARs). NMFS recommends that the commenter present this concern during the public comment period for the SARs.

Also, NMFS notes that 10 trips, with 410 sets, were observed in this fishery in 2007 with no observed marine mammal interactions. NMFS will reexamine the classification of this fishery on a future LOF if the analysis of the 2008 observer data reported in the SARs indicated that a change in categorization is warranted.

Comment 15: The CBD stated that the proposal to split the HI longline fishery into separate deep-set and shallow-set components appears appropriate. However, they believe that both components should be classified as Category I. Observer data from 2008 shows take of false killer whales and humpback whales from the shallow-set component of the fishery, indicating that it too meets the Category I criteria.

Response: As noted in the response to comment 14, NMFS analyzes observer data and applies observed takes against calculated PBR levels during the process of updating and publishing the annual SARs. NMFS then classifies fisheries on the LOF based on the most recent SARs (including observer documented interactions, stranding data, and other data reported in the SARs). The data presented in the annual SARs have an average of a two-year time delay because of the time needed to properly analyze the data and complete the peer-review process. Observer data from 2008 has not yet been analyzed and included in the current SARs or included in the level of annual mortality and serious injury for false killer whales or humpback whales. NMFS recommends that the commenter present this concern during the public comment period for the next draft SAR. NMFS will reexamine the categorization of this fishery on a future LOF if the analysis of the 2008 observer data reported in the SARs indicates that a change in categorization is warranted.

Comment 16: The HLA supported NMFS proposal to separately categorize the deep-set and shallow-set HI-based longline fisheries. As explained by NMFS in the proposed rule, based on the factors listed in the proposed rule (and as HLA has previously commented). Recognizing the well-documented distinctions between these fisheries, NMFS brings the LOF into harmony with the purpose of the annual LOF, to provide meaningful public identification of fisheries by the extent to which they interact with marine mammals.

Response: NMFS acknowledges the comment. The split is warranted based on the several factors listed in the proposed rule.

Comment 17: The WPFMC and HLA stated that the shallow-set component of the HI longline fishery must be based on the best available population data, and may be more appropriately classified as a Category III fishery. NMFS bases the Category II designation on a single interaction from 2006 with a humpback whale, thought to be from the Central North Pacific stock, which has a PBR level of 12.9 whales. However, NMFS recognized in the draft 2008 SAR (73 FR 40299, July 14, 2008) that this information is outdated because it is based on abundance estimates that are more than eight years old. NMFS has new, reliable population abundance data from the Structure of Populations, Levels of Abundance, and Status of Humpbacks (SPLASH) project, which reports a marked increase in North Pacific humpback whale populations. In a May 2008 press release, NMFS announced that the overall population of humpbacks in the North Pacific Ocean ''has rebounded to approximately 18,000 to 20,000 animals.'' The HLA added that the MMPA requires that NMFS use the best available scientific information in determining the minimum population estimate used and to classify fisheries on the LOF; which is true regardless of whether the information has been published yet. Further, the WPFMC believes that there should be a transparent peer reviewed process for the designation of strategic stocks.

Response: This comment refers to a recalculation of the PBR for humpback whales. Changes to population estimates, trends, and PBR levels are reported in the SARs, and NMFS then categorizes fisheries on the LOF based on the information presented in the SARs. The most recent SARs have not yet incorporated the published data from the SPLASH project to calculate a new and/or different PBR for humpback whales. NMFS recommends that the commenter present this concern during the public comment period for the next draft SAR. NMFS will reexamine the categorization of this fishery on a future LOF if future SARs report a change to the current PBR for this stock of humpback whales.

The process for designating strategic stocks is both transparent and peer-reviewed. The designation of a strategic stock is first listed in the proposed annual SARs, which are both peer-reviewed by the Scientific Review Groups and released for public review and comment before becoming final.

Comment 18: The Marine Mammal Commission concurred with NMFS' proposal to split the HI longline fishery into the Category II shallow-set and Category I deep-set fisheries based on the reasons provided in the proposed rule. The reclassification of the shallow-set fishery is warranted based on the lack of information regarding population structure and abundance of marine mammals that the fishery interacts with outside the U.S. EEZ. NMFS based the proposed Category II classification on observed interactions rates that do not exceed 50 percent of PBR for stocks within the U.S. EEZ. However, the PBR level is unknown for stocks that occur outside the U.S. EEZ and are taken incidentally by this fishery. As stated in the proposed LOF, Category II is the appropriate category for new fisheries for which NMFS does not have adequate information to accurately categorize the fishery.

Response: NMFS acknowledges the comment and will continue to conduct and support research regarding the population structure and abundance of the marine mammals that are interacting with these fisheries.

Comment 19: The WPFMC continues to be concerned about the categorization of all hookings on the exterior of the head and in the jaw in cetaceans as being likely to result in mortality. The Council does not believe that there is sufficient scientific information to justify a 100 percent mortality rate for these injuries, and suggests instead that some realistic probability scale be developed similar to that for longline hooked turtles. For turtles, an external hooking is given a 5 to 20 percent probability of causing a post-release mortality, while internal hookings range from 10 to 60 percent probability, based on various factors. It seems inconsistent of NMFS to develop a precise defensible system of categorization for turtle hookings and a blanket 100 percent mortality rate for cetaceans based on any hooking to the head and internally. Clearly, these are very different taxa, but there must be sufficient scientific observations available on cetaceans with which to construct better evaluation criteria for hookings. As such, the interactions with cetaceans are always going to be positively biased, with excessive mortalities being ascribed to fisheries.

Response: This comment is related to the determination of a serious injury, which NMFS scientists and/or the authors of the SARs make and report in the annual SARs. The SARs estimate annual human-caused mortality and serious injury caused by interactions with commercial fisheries and other human activities. NMFS does not make serious injury determinations through the LOF rulemaking process. NMFS classifies fisheries on the LOF based on the level of serious injury (and mortality) presented in the SARs. NMFS recommends that WPFMC submit this comment during the public comment period on the next draft SAR.

Comment 20: The WPFMC stated that the proposed list of marine mammals with which HI's deep set longline fishery interacts includes the Bryde's whale, pantropical spotted dolphin, and sperm whale. A search of the observer

data from 2003–2007 shows no records of these three species interacting with the fishery. If they are to be listed in Table 1, there should be a footnote to the effect that these cetaceans were not seen within the past five years, which the Council understands is the criteria used when evaluating the fisheries for the LOF.

Response: There are no records of recent serious injuries or mortalities of Bryde's whales, sperm whales, or pantropical spotted dolphins in the ''HI deep-set (tuna target) longline/set line fishery.'' The recorded interactions with these species were in the shallow-set component of the HI longline fishery. These species were inadvertently retained under the list of species/stocks killed/injured in this fishery when NMFS split the HI longline fishery into the separate deep-set and shallow-set components on the proposed 2009 LOF (73 FR 33760, June 13, 2008).

NMFS has corrected this error and removed Byrde's whale, sperm whale, and pantropical spotted dolphin from the list of species/stocks killed/injured in the ''HI deep-set (tuna target) longline/set line fishery'' in the final 2009 LOF, and included the species on the list for the shallow-set longline fishery.

Comment 21: The WPFMC believes that the evidence for categorizing the HI deep-set tuna longline fishery as a Category I is inadequate. The Council does not dispute the existence of an isolated, small false killer whale stock around Hawaii. However, the current longline exclusion zone around Hawaii extends from 50–75 nmi and creates a separation between these individuals and the fishery. Available genetic data suggests that the deep-set fishery interacts primarily with a larger Eastern Pacific false killer whale population.

Response: Based on the PBR and the average annual serious injury and mortality rate reported in the recent SARs, the ''HI deep-set (tuna target) longline/set line fishery'' qualifies as a Category I fishery on the LOF (serious injury and mortality exceeds 50 percent of PBR for the HI stock of false killer whales). NMFS calculates PBR levels and determine the status of marine mammal stocks during the annual process of developing a SAR; then NMFS classifies fisheries on the LOF based on data reported in the annual SARs. NMFS recommends the commenter submit this comment, and any other comments regarding the stock's PBR or strategic status, during the public comment period for the next draft SAR.

Comment 22: The CBD stated that the ''Gulf of AK sablefish longline fishery'' is listed as a Category III. Due to frequent interactions with sperm and killer whales, this fishery should be listed as a Category I or II.

Response: Fisheries are categorized in the LOF based on the level of serious injuries and mortalities relative to the PBR levels for specific species, not the frequency of ''interactions.'' At the time the proposed 2009 LOF was developed, the best available information was that no marine mammals were seriously injured or killed incidental to this fishery between 2001 and 2005, the most current data available in the SARs, so the fishery is appropriately retained in Category III. New information on serious injuries and mortalities has been included in the recent draft SARs which indicates that 3 serious injuries of sperm whales were observed in 2006, which would extrapolate to an estimated 10 serious injuries or mortalities of sperm whales incidental to this fishery, or 2 sperm whales per year for the 5-year period from 2002–2006. This information is still under review and will be considered when the next LOF (the proposed 2010 LOF) is developed.

Comment 23: The CBD noted inconsistencies in the classification of AK purse seine fisheries. Three salmon purse seine fisheries are listed as Category II, yet the description of the Category III ''AK salmon purse seine (except Southeast AK, which is in Category II) fishery'' only excludes one of these Category II fisheries from its description. This should be corrected, and the estimated number of vessels altered as necessary for consistency.

Response: The Category III fishery identified as ''AK salmon purse seine (except Southeast AK, which is in Category II) fishery'' was included in the LOF when it was created under the section 118 of the MMPA (i.e., under the 1994 MMPA Amendments). The ''AK salmon purse seine (except Southeast AK, which is in Category II) fishery'' was created to include all of the numerous purse seine fisheries around the state of AK, other than the Category II ''Southeast AK purse seine fishery.'' Information on marine mammal interactions with any of these purse seine fisheries included in the ''AK salmon purse seine (except Southeast AK, which is in Category II) fishery,'' particularly serious injury and mortality, was not available to NMFS when the LOF was created at that time. Since 1994, information on serious injury and mortality to humpback whales in the Cook Inlet and Kodiak purse seine fisheries has been obtained. Therefore, NMFS identified the ''Cook Inlet salmon purse seine fishery'' and the ''Kodiak salmon purse seine fishery'' separately on the 2007 LOF (72 FR 14466, March 28, 2007) as Category II fisheries based on the results from the analysis of the respective serious injury and mortality levels of humpback whales in these fisheries. To clarify that the Category III AK salmon purse seine fishery includes all AK salmon purse seine fisheries other than those listed as Category II on the LOF, NMFS has renamed the Category III ''AK salmon purse seine (except Southeast AK, which is in Category II) fishery'' as the ''AK salmon purse seine (excluding salmon purse seine fisheries listed as Category II).'' If additional information on marine mammal serious injury and mortality incidental to other discrete AK salmon purse seine fisheries becomes available in the future, and meets the criteria for elevation to Category II, those individual fisheries will be removed from the broader ''AK salmon purse seine (excluding salmon purse seine fisheries listed as Category II)'' and elevated to Category II under appropriate, specific fishery-identifying nomenclature.

Comment 24: The CBD noted that high levels of entanglement-related scarring have been documented for humpback whales in AK. While some gillnet and purse seine fisheries are listed as Category II due to humpback interactions, the ''AK Bering Sea sablefish pot fishery'' is the only pot, ring net or trap fishery so categorized. All other AK pot fisheries should also be classified as Category II rather than Category III.

Response: NMFS uses very careful criteria in assigning marine mammal serious injuries and mortalities to specific fisheries for the purpose of categorizing them in the LOF. In the Alaska Region, these criteria include, but are not limited to: Clear identification of attached gear, eyewitness accounts, or other credible information. When those criteria have been met, the individual serious injury or mortality is included in the data set used in the standard annual analysis conducted to assign fisheries in the LOF.

Current information on humpback scarring in Alaska is not detailed enough to allow NMFS to be able to identify and link specific scars or scarred animals to an individual fishery or even a specific fishing gear type, except under the rarest of circumstances. Further, humpback whales travel long distances and obtain scars from gear originally set great distances from the geographic location where the scar was noted. Finally, the analysis conducted for the annual LOF uses a rolling five-year average. This

allows for changes to fishing methods or natural fluctuations in animal distribution or behavior. Scars persist for varying lengths of time and scarring information would need to be much better understood than it is currently to be able to be used effectively in the annual LOF analysis. Information regarding serious injury or mortality incidental to the ''Gulf of Alaska sablefish pot fishery'' clearly indicates the take of the humpback whale was associated with that fishery, leading to the Category II classification for that fishery.

Without more detailed evidence, NMFS cannot assume that all humpback whale scars result from interactions with specific commercial fisheries. Further, NMFS cannot make assumptions at this time as to what proportion of entanglements that result in scarring lead to serious injury or mortality, the driving criteria for classifying fisheries on the LOF.

Comment 25: If the ''OR Dungeness crab pot fishery'' is elevated to a Category II on the final 2009 LOF, the ODFW requested NMFS advice and assistance to fulfill, in the most efficient manner possible, those requirements under the ESA that would apply to the fishery's interactions with listed humpback whales.

Response: This final rule classifies the ''OR Dungeness crab pot fishery'' as a Category II fishery. NMFS will work with the State of Oregon relative to changes on the LOF that affect state-managed fisheries.

Comment 26: If the ''OR Dungeness crab pot fishery'' is elevated to a Category II on the final 2009 LOF, fishing vessel owners will be required to register with NMFS and obtain a marine mammal authorization certificate by January 1, 2009. This would occur during the height of effort in this fishery and most participants will be actively fishing when the new rule would take effect. The ODFW requests that NMFS strive to minimize any disruptions to fishing activities in order to implement any new requirements. ODFW and NMFS regional staff have discussed potential implementation issues, particularly for the first year, and ODFW staff remains available to work with NMFS on these issues.

Response: NMFS will work with the state fishery managers to integrate fisher registration for the MMAP program with state licensing processes, to the extent possible. NMFS will request fisher registration information from the state licensing office in order to issue authorization certificates to fishers in a timely and cost efficient manner.

Comment 27: ODFW supports the addition of a separate Category II ''OR Dungeness crab pot fishery.'' ODFW is concerned about fishery interactions with marine mammals and has implemented several on-going management measures for the OR Dungeness crab pot fishery that will reduce the risk of interactions in the future. Fishing effort has been reduced from an estimated high of 200,000 pots in 2006, when the observed humpback whale entanglement occurred, to a maximum of 150,000 pots per season. Logbook information including date, location, and amount of gear fished is now required for all crab vessels. This information will be useful in the future to assess the potential for interactions and ways to reduce interactions. ODFW has also implemented management measures that restrict untended gear to no more than 14 days and several temporary rules to facilitate fishers opportunistically retrieving lost or derelict gear. ODFW has also partnered with others to charter vessels specifically to retrieve derelict and lost crab pots. ODFW anticipates working with NMFS to smoothly and efficiently implement the new requirements.

Response: NMFS acknowledges the State of Oregon's positive steps in reducing the incidental take of marine mammals in the ''OR Dungeness crab pot fishery.''

Comment 28: ODFW strongly supports the proposal to split the current ''WA/OR/CA crab pot fishery'' into three fisheries, one for each state. Each state has different management and permitting frameworks for Dungeness crab trap/pot fishing, and different amounts of gear in state waters. Also, known interactions with marine mammals differ between states, probably mainly due to differences in the timing and amount of gear fished, and differences in timing and distribution of marine mammals along the coast. The potential risk of humpback whale entanglements in Dungeness crab pot gear appears to progressively decrease from CA to WA, based on the humpback whale movement patterns, fishing intensity patterns, and observed reports of humpback whale entanglements. This differential risk from south to north justifies the proposed separation of the west coast fishery into three fisheries. Also, while there is a Tri-State agreement that addresses some aspects of the West Coast Dungeness crab fishery, the individual states have the primary role in managing their respective fishery and the management authorities and actions differ among states. The different authorities and the lack of a true regional management system provide added justification to separate the fishery among states.

Response: NMFS has classified the three fisheries by state in this final rule. The presence of humpback whales along the west coast varies seasonally and the relationship between the presence of whales and the peak periods of fishing effort likely influences the potential for entanglement. The management of the fisheries by the individual states affords added flexibility to respond to regional differences more quickly to reduce the risk of entanglement for the whales.

Comment 29: The CBD stated that, while the proposed 2009 LOF includes several West Coast pot and trap fisheries as Category II due to interactions with humpback whales, the proposed LOF improperly excluded many similar fisheries. CBD stated that NMFS acknowledges humpback whale entanglements are likely significantly underreported, yet only includes those fisheries as Category II if the fishery is known to interact with humpbacks or if there is a time/space overlap with a reported entanglement. CBD believes this method results in several fisheries being classified as Category III when Category II is the more appropriate classification. All pot or trap fisheries that occur within the range of the humpback whale should be classified as Category II until and unless observer coverage demonstrates that they do not pose a risk of entanglement to the species.

Response: As described in the final 2008 LOF (72 FR 66048, 66066, November 27, 2008), NMFS researched the commercial pot and trap fisheries to better understand which of those fisheries may interact with humpback whales along the coast of California. NMFS extended its analysis for the 2009 LOF to include pot and trap fisheries along the coasts of Washington and Oregon and worked closely with fisheries staff from the three states. NMFS developed criteria described in the proposed 2009 LOF to evaluate the pot and trap fisheries along California, Oregon, and Washington and determine which are most likely to interact with humpback whales. The first criterion was whether there is direct evidence of entanglements with a specific fishery (e.g., the identification of spot prawn gear on a humpback whale entangled in September 2005). In the absence of direct evidence on interactions, the second criterion was used, (i.e., the fishery occurs in an area and time where humpback whale entanglements have been observed and reported to NMFS). This criterion was used to refine the analysis with the limited information

available. NMFS acknowledges the uncertainties associated with this analysis. However, NMFS believes that the criteria described in the proposed 2009 LOF and used to assess the fisheries is the most reasonable means at this time of using the available information and reclassifying certain pot and trap fisheries.

The commenter suggests that all west coast pot and trap fisheries in the range of humpback whales be listed as Category II, until observers can show that the fisheries do not pose a threat to marine mammals. However, observers in pot and trap fisheries have very limited ability to detect these types of interactions. In most instances, trap/pot gear is left to soak for some time and is not actively tended by the fishing vessel for the majority of the soak period. Interactions (entanglements) between large whales and trap/pot gear are therefore unlikely to be observed from the fishing vessel except in the rare instance when the vessel is present at the time the entanglement occurs. Therefore, alternative monitoring methods are needed for trap/pot fisheries. NMFS has begun work (and will cooperate with other agencies, the scientific and fishing communities, and the general public) to find ways to monitor pot/trap fisheries and gather additional data to better understand the nature of the interactions between these fisheries and marine mammals. As noted in the 2009 LOF proposed rule, when and if additional information becomes available, NMFS would consider reclassifying pot/trap fisheries.

Comment 30: The Marine Mammal Commission recommended that NMFS reclassify all currently recognized west coast pot and trap fisheries as Category II until additional information is available to categorize a given fishery as a Category I or III. Although the Commission appreciates NMFS' efforts to evaluate information on observed humpback whale entanglements and attribute those entanglements to specific trap/pot fisheries, the Commission believes that the analysis and resulting proposed reclassifications do not account appropriately for the substantial uncertainty in the number and location of entanglements. The Commission acknowledged that NMFS has shown that humpback whales do become entangled in trap/pot gear, and that there is no evidence to suggest that whales are more or less likely to become entangled in gear from any specific trap/pot fishery. NMFS noted in the proposed 2009 LOF 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.'' The Commission believes that this statement misplaces the burden of proof and removes the incentive for collecting important information on entanglement rates. The vast majority (90 to 97 percent) of humpback whale entanglements are not observed (Robbins and Matilla, 2001, 2004) and, by implication, at least some entanglements of endangered baleen whales are not observed and reported. Given that the majority of entanglements are not observed, it is reasonable to classify all west coast trap/pot fisheries as Category II based on their similarity to those trap/pot fisheries that are known to have incidentally entangled whales. Also, NMFS acknowledges in the proposed rule that ''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.''

Response: Please see the response to Comment 29 above. NMFS acknowledges that there are likely interactions with marine mammals that are not observed or reported. However, NMFS reviewed all of the records of entanglements, the distribution of humpback whales and the spatial and temporal characteristics of the pot and trap fisheries on the U.S. west coast and developed criteria to reclassify fisheries based upon the best available information. NMFS is also working on ways to increase the amount of information available on interactions between marine mammals and pot and trap fisheries on the U.S. west coast. The commenter suggests that other species of endangered baleen whales may be entangled in pot and trap gear, but not observed. At this time, NMFS is focused on interactions with humpback whales and gray whales since these are the only species observed entangled in pot and trap gear on the U.S. west coast. Also, other pot and trap fisheries in the Pacific (including Hawaii and Alaska fisheries) have not been observed to interact with baleen whale species other than humpback whales.

NMFS notes that there was a typographical error in the proposed 2009 LOF on page 33772. The text should have stated that Category II is appropriate for *new* fisheries for which NMFS does not have adequate information. This is consistent with the text throughout the proposed rule related to the addition of high seas fisheries, and as stated in the final rule implementing the section 118 regulations (60 FR 45086, August 30, 1995, at 45090) and the final 2006 LOF (71 FR 48802, August 22, 2006; Comment/Response 4). As noted on page 33763, 33768, 33769, and 33770 of the proposed 2009 LOF, ''Category II is the appropriate category for new fisheries for which NMFS does not have adequate information to accurately categorize.'' Fisheries previously included on the LOF as a Category I or III are reclassified as Category II after evaluating the information in the SARs, the type of gear being used, stranding records, and the distribution of marine mammals in the area. All west coast pot and trap fisheries have been previously included in the LOF as Category III fisheries; therefore, NMFS conducted this type of analysis on the west coast pot and trap fisheries and detailed the process in the proposed rule. As stated in the proposed 2009 LOF, NMFS will continue to review information related to humpback and gray whale entanglement events in pot and trap gear and consider reclassifying other west coast pot and trap fisheries if additional information becomes available.

Comment 31: The CA Wetfish Producers Association requested NMFS remove short-finned pilot whales from the list of species killed/injured in the Category II ''CA squid purse seine fishery'' because the most recent scientific information available does not justify including this species for interactions with this fishery. The fishery is being monitored and was observed during the expansion period. The 2007 SAR indicates that 193 sets were observed from 2004–2006. The commenter examined the NMFS SWR CA Coastal Pelagic Purse Seine Observer Program database, which indicated that 95 sets were observed through March 2007, with an additional 80 sets observed from July 2007–December 2007. Based on these data, there is not evidence that short-finned pilot whales were taken in this fishery during this recent span of years.

Response: NMFS received a similar comment on the proposed 2008 LOF (72 FR 66048, November 27, 2008; comment/response 18). As noted in the response to comment 18 in the 2008 LOF, there have been no observed takes of short-finned pilot whales in this fishery during the three years it was monitored (2004–2006); however, annual observer coverage was very low (the estimated coverage was only 1.1 percent in 2005, and less than 2 percent in the other years). The low level of observer coverage over three years may not reliably indicate the frequency of incidental mortality or serious injury of marine mammals in this fishery. In

considering whether a fishery should be listed as Category II, NMFS must evaluate a variety of factors including the fishing technique used, the seasons and areas fished, stranding reports, and the distribution of marine mammals in the area. NMFS feels that based upon the most recently available information, including stranding reports over the past few years, that a thorough evaluation of the ''CA squid purse seine fishery,'' as well as the ''CA anchovy, mackerel, sardine purse seine fishery'' and the ''CA tuna purse seine fishery,'' is warranted. NMFS will thoroughly evaluate the available information on the three above referenced California purse seine fisheries and will include the results in the proposed 2010 LOF. At that time, NMFS will determine whether reclassifying some of the CA purse seine fisheries, including the ''CA squid purse seine fishery,'' is appropriate.

Comment 32: The CA Wetfish Producers Association requested NMFS remove common dolphin, stock unknown, from the list of species killed/injured in the Category II ''CA squid purse seine fishery'' based on the most recent scientific information available. The NMFS SWR CA Coastal Pelagic Purse Seine Observer Program data contain one single observed interaction off Santa Barbara on January 3, 2005, resulting in one dead unidentified common dolphin. The most recent and relevant scientific information indicates there have been zero interactions with either long- or short-beaked common dolphins. There were more than 193 trips observed by federal observed during 2004–2006, and 80 sets observed in mid- to late-2007, with zero interactions (except for the single 2005 incident). Clearly, this fishery represents no current threat to either stock of common dolphins.

Response: A similar comment was made on the 2008 LOF. As described in NMFS' response to this comment in the final 2008 LOF (72 FR 66048, November 27, 2007; Comment/Response 19), there is insufficient information available to identify the species of common dolphin observed taken in the squid purse seine fishery. Both species, long-beaked common dolphins and short-beaked common dolphins, utilize much of the same habitat and overlap in areas with the squid purse seine fishery; therefore, it is possible that either species could have been taken. Further, the draft 2008 SARs includes an account in 2006 of eight unidentified dolphins entangled in a squid purse seine net. Seven of the animals were released unharmed, and one was seriously injured. The area in which these interactions occurred is an area where long-beaked common dolphins are known to occur. Given the paucity of information on the interaction, NMFS cannot eliminate the possibility that a long-beaked common dolphin was seriously injured during this event.

To make the list of marine mammal species and stocks incidentally killed/injured in the ''CA squid purse seine fishery'' more clear, NMFS is changing the stock from ''common dolphin, unknown'' to ''short-beaked common dolphin, CA/OR/WA'' and ''long-beaked common dolphin, CA'' to account for the uncertainty of the species observed seriously injured or killed in this fishery. This is consistent with how NMFS lists marine mammal stocks on the LOF that are difficult to distinguish from one another in the field and/or for which additional genetic data is not available for a given interaction (i.e., resident and transient killer whales in Alaska fisheries, and long-finned and short-finned pilot whales in Atlantic fisheries).

Comment 33: The CA Wetfish Producers Association requested NMFS recategorize the Category II ''CA squid purse seine fishery'' to a Category III based on existing observer data from 2004–2007, the paucity of marine mammal interactions with this fishery, and because the number of participants has reduced from 71 to 64 active vessels. Recategorization of this fishery to a Category III is justifiable and consistent with the best scientific information available. Also, a recategorization would provide the industry with validation that NMFS actually utilizes observer data to adjust the LOF annually to reflect current circumstances in commercial fisheries. Furthermore, the commenter requested the LOF be updated to reflect the reduction in the number of participants to 64, consistent with CA Department of Fish and Game records indication that 64 purse seine vessels landed squid in 2007.

Response: NMFS recognizes that the squid purse seine fishery warrants further evaluation based upon all available information, including observer records. Please see response to Comment 31 above for more information. NMFS appreciates the information on the number of active vessels in this fishery and has updated the number of active vessels to 64 in the final 2009 LOF.

Comment 34: The Marine Mammal Commission concurred with NMFS' proposal to reclassify the ''CA halibut/white seabass set net fishery'' from Category I to II based on the information provided in the proposed rule.

Response: NMFS acknowledges and appreciates the comment.

Comment 35: The CDFG supported reclassifying the ''CA Dungeness crab pot fishery'' to a Category II fishery given the relatively high likelihood of humpback whale interactions. However, as with the sablefish pot fishery, CDFG believes that this fishery should have a coastwide designation as the ''(WA/OR/CA) Dungeness crab pot fishery'' because it is difficult to determine the precise location of the original entanglement or other incident, and humpback whale migratory patterns are such that an entangled whale might be encountered and reported far from the site of the incident. Also, there is no evidence that primary fishing areas in California, which are north of Point Arena, differ from Oregon and coastal Washington with respect to the likelihood of these interactions.

Response: As explained in the proposed 2009 LOF, NMFS believes that because of the differences in management of the Dungeness crab pot fishery by each state, it is appropriate to split the fishery into three separate fisheries by state. Also, unlike the sablefish fishery, fishermen targeting Dungeness crab are limited to fishing the waters off the state for which they hold a permit. For example, a fisherman with a Washington permit may only set Dungeness crab pot gear off Washington, while a fisherman with a California permit may only set gear off California. The sablefish fishery permit does not have this same restriction. A fisherman possessing a sablefish fishery permit (open access) may set gear in the waters off any of the three states.

As noted in the proposed 2009 LOF, NMFS acknowledged some level of uncertainty associated with the assumption that the area in which an entangled animal is observed is the area where the entanglement occurred. However, this assumption was considered necessary in order to utilize the available information and is supported by the available data on entanglements. For example, spot prawn gear was identified on a humpback during a time and in an area during high levels of effort in the spot prawn trap fishery (73 FR 33799, June 13, 2008). NMFS believes that effort in the fisheries is likely to affect the likelihood of an interaction with a humpback whale, since each fishery occurs at slightly different times of the year off the coasts of California, Oregon, and Washington. For example, the effort in the southern half of California in the ''CA Dungeness crab pot fishery'' may begin in mid-November, overlapping with the time that humpback whales are

likely to be migrating through the waters. However, in Oregon and Washington the peak of the fishery is December through February, at which time most humpback whales have migrated out of the area on their way to winter breeding areas off Mexico. As described in NMFS' pot and trap fishery characterization referenced in the proposed 2009 LOF, Dungeness crab pots may be fished through the spring, in waters off each of the three states' coasts, thus affecting the likelihood of interactions with humpback whales (i.e., Dungeness crab pot gear fished off Oregon in May, is believed to be responsible for the entanglement of a humpback whale that stranded dead on the Oregon coast). However, given the typical fishery patterns and the migratory behavior of humpbacks in California waters, it is likely that gear off California is more likely to entangle humpbacks during their migration.

Comment 36: The CDFG supported the evaluation of the ''WA/OR/CA sablefish pot fishery'' to a Category II fishery and supported the continuation of the tri-state, coastwide designation of the sablefish pot fishery. The limited information available regarding humpback whale interactions makes it difficult to determine the precise location of the original entanglement or other incident, and humpback whale migratory patterns are such that an entangled whale might be encountered and reported far from the site of the incident.

Response: As described in the proposed 2009 LOF and in the response to comment 35 above, the existing sablefish fishery regulations allow fishers from one state to fish sablefish pot gear off another state. Therefore, it is most appropriate to list the sablefish pot fishery on the LOF as one fishery that includes effort in waters in all three states.

Comment 37: The CDFG supported the removal of Eastern North Pacific humpback whales and CA sea otters from the list of species and stocks incidentally killed/injured in the Category III ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery,'' based on the 2008 analysis of humpback and gray whale interactions, and the lack of any known interactions with sea otters since 1987.

Response: NMFS acknowledges this comment.

Comment 38: The CDFG proposed that NMFS remove finfish from the Category III ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery,'' and that the fishery be renamed to reflect this change, because the finfish trap fishery is a separate and distinct fishery from the various crustacean fisheries. Additionally, finfish are included in the Category III ''CA finfish and shellfish live trap/hook-and-line fishery.'' Furthermore, finfish cannot be taken in the lobster and rock crab trap fisheries (Fish and Game Code Section 8250.5 and Title 14, CCR, Section 125.1). However, if the reference to finfish in this fishery is meant for hagfish, then it should be specified as such. Finally, the gray whale interaction listed in the LOF table comes from an observation of a gray whale with a lobster trap buoy line attached, and not from a finfish trap.

Response: NMFS appreciates CDFG's clarification on these fisheries and has removed finfish from the existing fishery description and name. The name of the fishery in the final 2009 LOF has been renamed to the ''CA spiny lobster, coonstripe shrimp, rock crab, tanner crab pot or trap fishery.'' Finfish in this fishery did not refer to hagfish, as the hagfish pot/trap fishery is currently listed separately on the LOF as the Category III ''OR/CA hagfish fishery.'' NMFS acknowledges and appreciates the clarification on the gray whale take in the lobster trap fishery and will continue to list gray whale as one of the species incidentally killed or injured in this fishery, as it is listed in the proposed 2009 LOF.

Comment 39: The CDFG supported the proposal to separate the spot prawn trap fishery from the other crustacean trap/pot fisheries and place it in Category II. CDFG understands that the change is being proposed so that the other fisheries can remain in Category III.

Response: NMFS acknowledges the comment.

Comment 40: The CDFG proposed removing shellfish from the ''CA finfish and shellfish live trap/hook-and-line fishery'' and renaming it the ''CA nearshore finfish live trap/hook-and-line fishery,'' maintaining the Category III status because there are no documented instances of marine mammal interactions. Shellfish are already covered in the proposed ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery.'' Also, while these shellfish species are taken live they are not taken with hook-and-line gear. The majority of nearshore finfish are landed in the live condition. Nearshore finfish traps are set in very shallow waters (two to eight fathoms) in kelp beds and over rock habitat off southern and central CA. Traps are usually set and pulled multiple times a day.

Response: The proposal to rename this fishery is appropriate for the reasons stated by the commenter. NMFS has renamed the Category III ''CA finfish and shellfish live trap/hook-and-line fishery'' as the ''CA nearshore finfish live trap/hook-and-line fishery'' in the final 2009 LOF.

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

Comment 41: The MAFMC supported the proposal to eliminate *Loligo, Illex*, and butterfish from the list of species targeted by the Category II ''Mid-Atlantic Mid-Water trawl fishery.'' In addition, the MAFMC supports the addition of these three species to the list of species targeted by the Category II ''Mid-Atlantic bottom trawl fishery.'' The MAFMC notes that it was not possible to determine what other species were added to the species list for this fishery given the information provided in the proposed rule.

Response: After removing *Illex* squid, *Loligo* squid, and butterfish from the species targeted by the ''Mid-Atlantic mid-water trawl fishery,'' NMFS added ''chub mackerel and miscellaneous other pelagic species'' (73 FR 33775, June 13, 2008) to the description of species targeted by the Mid-Atlantic mid-water trawl fishery based on information provided in Appendix III of the 2007 final SAR.

Comment 42: The MAFMC, the NCDMF, and the Garden State Seafood Association (reiterating a request made as a comment on the 2007 LOF and in a letter sent directly to NMFS in November 2006) each requested that NMFS conduct a Tier Analysis of the bluefish gillnet and croaker gillnet fisheries, currently included under the Category I ''Mid-Atlantic gillnet fishery.'' The commenters requested the Tier Analysis to determine whether the data support downgrading these fisheries from Category I to Category II or III (thereby also separating the bluefish and croaker components from the ''Mid-Atlantic gillnet fishery''). Available observer data indicate that from 2000–2005 there were 109 Atlantic croaker gillnet trips and 70 bluefish gillnet trips observed with no documented marine mammal interactions. Should these fisheries be downgraded to a Category II or III, the NCDMF recommends that observer coverage be increased in other Category I Mid-Atlantic gillnet fisheries.

Response: In 1998, NMFS determined regulatory measures should be based on the characteristics of the gillnet fisheries that relate to marine mammal bycatch, rather than to base the regulations on target fisheries. NMFS determined that

the nature of the gear and how the gear is deployed determines whether marine mammals become entangled. Additionally, because the intended target species is not always the actual species landed, regulations based on sub-fisheries would become very difficult to enforce (See Harbor Porpoise Take Reduction Plan Final Environmental Assessment and Final Regulatory Flexibility Analysis, NMFS, 1998). Since the characteristics of gillnet gear targeting bluefish and croaker cannot be differentiated from the ''Mid-Atlantic gillnet'' fishery gear definition, NMFS has determined that the bluefish and croaker fisheries cannot be separated out for a separate tier analysis. Therefore, NMFS retains the current inclusion of the bluefish and croaker gillnet fisheries in the ''Mid-Atlantic gillnet fishery'' (Category I) and does not find the suggested sub-division to be warranted.

Comment 43: NMFS proposes to add trotline gear as a new Category III fishery. The proposed rule describes trotline gear as a series of baited hooks attached to a horizontal line targeting blue crab, catfish, and other finfish species throughout the coastal Atlantic and Gulf of Mexico. The MAFMC states that in the Mid-Atlantic region, primarily in the Chesapeake Bay, trotlines are fished for blue crab without the use of hooks and asks if this fishery should be included under the newly proposed trotline category. If so, then the LOF should recognize a separate category for trotlines that do not use hooks, or consider excluding this fishery from the list because no hooks are deployed in this fishery. Similarly, the NCDMF did not support the inclusion of the blue crab trotline fishery in the proposed Category III ''U.S. Atlantic Ocean, Gulf of Mexico trotline fishery,'' and recommended that blue crab trotlines not be listed under this fishery. Blue crab trotlines used in North Carolina do not use hooks for retention of bait. Instead, the bait is tied to the trotline using small diameter twine.

Response: At this time, the current definition only includes trotlines with hooks. However, in the future, NMFS intends to evaluate all Category III ''longline/hook and line fisheries'' definitions for clarification purposes. NMFS will investigate if the expansion of the ''U.S. Atlantic, Gulf of Mexico trotline fishery'' warrants including gear without hooks or if non-hook trotline gear is more specific, therefore requiring a unique fishery definition.

Comment 44: The MAFMC supported the addition of the North Carolina striped bass beach haul seine fishery to the list of fisheries included in the Mid-Atlantic haul/beach seine fishery.

Response: NMFS has added the North Carolina striped bass beach haul seine fishery to the list of fisheries included in the Category II ''Mid-Atlantic haul/beach seine fishery'' based on current gear practices and thus enabling more effective conservation measures and management.

Comment 45: The NCDMF supported the proposed revisions to the description of the Category II ''Mid-Atlantic haul/beach seine fishery.'' The revised description will complement NCDMF Proclamation FF–51–2008, effective December 2008, which requires seines used in the Atlantic Ocean striped bass beach seine fishery to be constructed of multifilament or multi-fiber webbing. NCDMF intends to maintain the multifilament or multi-fiber webbing requirements throughout the Atlantic Ocean beach seine season.

Response: NMFS will continue to work collaboratively with NCDMF to ensure descriptions and classifications in the list of fisheries of beach-based fisheries in North Carolina complement NCDMF's efforts.

Comment 46: The CBD and the Marine Mammal Commission reiterated previous years' comments expressing concerns about marine mammal interactions with Gulf of Mexico fisheries. The Commission recommended that NMFS expedite its investigation of bottlenose dolphin stock structure, and both CBD and the Commission recommended NMFS reevaluate the classification of Gulf of Mexico fisheries. The CBD believes that the ''Gulf of Mexico blue crab trap/pot fishery'' should be classified as at least a Category II, and the ''Gulf of Mexico menhaden purse seine'' and the ''Gulf of Mexico gillnet'' fisheries should be classified as Category I based on known or likely impacts to bottlenose dolphin stocks.

Response: NMFS does not believe elevating the ''Gulf of Mexico blue crab trap/pot fishery,'' ''Gulf of Mexico menhaden purse seine fishery,'' or ''Gulf of Mexico gillnet fishery'' is supported by available information. There is no observer program for these fisheries. NMFS relies on stranding data and fisher self-reports to document fishery interactions with marine mammals. While these sources show only a low level of interactions, NMFS recognizes that they are unreliable and likely to be biased low. However, NMFS will continue monitoring using self-reports and stranding data. Observer coverage for these fisheries also remains a priority if resources become available. In addition, PBR is unknown for these stocks because of insufficient information on stock structure and abundance.

In the ''Gulf of Mexico blue crab trap/pot fishery,'' stranding data indicate there were two confirmed bottlenose dolphin interactions with crab pot fishing gear between 2002–2006, one of which was released alive. In the same period, four dead bottlenose dolphins stranded with rope or rope marks that may have been from trap/pot gear, but cause of death could not be determined.

The ''Gulf of Mexico menhaden purse seine fishery'' was observed by researchers from Louisiana State University in 1992, 1994, and 1995. The observers documented nine bottlenose dolphin captures, three of which were mortalities. Using observed and total fishery effort data, the number of takes was linearly extrapolated to an estimate of 68 animals. On the basis of this information, the fishery was elevated from Category III to Category II on the 1999 LOF (64 FR 9067, February 24, 1999). Since that time, there has been no observer coverage in this fishery. Fishers' self-reports through the Marine Mammal Authorization Program (MMAP) reveal five bottlenose dolphin mortalities from 2002–2006, with two mortalities in 2002, one in 2004, and two in 2005. However, information gathered under the MMAP cannot be verified, so it is not possible to extrapolate these numbers to obtain an estimate of total takes in this fishery.

No marine mammal mortalities associated with gillnet fisheries in the Gulf of Mexico have been reported through the MMAP. Stranding data suggest that marine mammal interactions with gillnets do occur, causing mortality and serious injury. NMFS acknowledges that stranding data likely underestimate the extent of fishery-related mortality and serious injury. Interpreting the data is difficult due to varying ability among the stranding network to detect and respond to strandings in all areas and accurately document human interactions and the condition of the carcass when stranded.

It is important to further investigate stock structure and abundance of bottlenose dolphins in the Gulf of Mexico. There is currently no PBR calculated for coastal stocks or bay, sound, and estuarine stocks, preventing NMFS from assessing the population-level impacts of serious injuries and mortalities. To address this, NMFS is working toward updating estimates of bottlenose dolphin abundance and refining bottlenose dolphin stock structure in the Gulf of Mexico. Specifically, in July and August 2007, NMFS completed a ship-based survey of

the Gulf of Mexico continental shelf and completed winter and summer aerial line-transect abundance surveys of coastal bottlenose dolphin stocks. To help characterize stock structure and abundance in bays, sounds, and estuaries, NMFS conducted a photo-ID mark-recapture study and biopsy sampling in Choctawhatchee Bay, FL, in July and August 2007 and biopsy sampling in Mississippi Sound in 2005 and 2006. Data collected during these surveys are currently being analyzed, and updated information on population abundance and stock structure will appear in the 2008 SARs. Once this information is available and PBR is calculated for each stock, NMFS will be better able to assess the impacts of mortality and serious injury of marine mammals associated with commercial fisheries in the Gulf.

Comment 47: The Marine Mammal Commission recommended that NMFS expand its efforts to collect reliable information on serious injury and mortality rates of marine mammals incidental to Gulf of Mexico fisheries, with priority being given to instituting an observer program for the menhaden purse seine fishery and expanding efforts to evaluate bottlenose dolphin entanglements in blue crab trap/pot gear. The CBD also recommended that NMFS make it a high priority to place observer coverage in the ''Gulf of Mexico menhaden purse seine fishery'' and further recommended that NMFS convene a TRT to address bottlenose dolphin take in the Gulf from this and other fisheries.

Response: Collecting reliable information on serious injury and mortality of marine mammals in the Gulf of Mexico is essential. However, there are currently no resources to fund observer programs in these fisheries. Therefore, NMFS is focusing on building volunteer stranding network capacity in the Gulf and increasing the level and quality of stranding response. NMFS held training workshops for the stranding network in Texas, Louisiana, and Mississippi in May 2008 to train responders how to recognize and document human interaction and conduct necropsies. NMFS expects these efforts to increase the effectiveness of the stranding networks and better inform management decisions in the future.

Observer coverage for the ''Gulf of Mexico menhaden purse seine fishery'' and evaluating bottlenose dolphin entanglements in the blue crab/trap pot gear are priorities if resources become available. Because population size and PBR are unknown for the three coastal and all the bay, sound, and estuary stocks, NMFS is unable to assess the population level impacts of serious injuries and mortalities from fisheries to determine whether annual mortality is greater than or equal to 50 percent of PBR. Thus, NMFS does not believe a TRT is supported by currently available information. As stated in the response comment 46, NMFS is working to collect and analyze additional data. Once this information is available and a PBR is calculated for each stock, NMFS will be better able to assess the impacts of mortality and serious injury of marine mammals associated with commercial fisheries in the Gulf of Mexico.

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/stocks that are incidentally killed or 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 changes outlined below.

Commercial Fisheries on the High Seas

Addition of Fisheries to the LOF

High Seas Atlantic Highly Migratory Species Fisheries

The high seas Atlantic HMS fisheries are added to the LOF. All gear types targeting Atlantic HMS on the high seas are categorized as Category II on the LOF, with the exception of longline and purse seine gear. The longline component of this fishery is classified as 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; and the purse seine component of this fishery is classified as 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.

Observer information is available on which marine mammal stocks are incidentally killed or injured on the high seas by the Atlantic HMS longline fishery; therefore, NMFS lists 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 purse seine fishery, which is an extension of the Category III ''Atlantic tuna purse seine fishery.'' NMFS adds all non-coastal marine mammal species/stocks killed or injured in the Category III ''Atlantic tuna purse seine fishery'' as injured or killed in the high seas purse seine component of the Atlantic HMS fisheries.

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 using gear other than longline and purse seine, NMFS lists the marine mammal species killed or injured in these fisheries as ''undetermined'' in Table 3.

High Seas Pacific Highly Migratory Species Fisheries

The high seas Pacific HMS fisheries are added to the LOF. All gear types targeting Pacific HMS on the high seas are listed as Category II, with the exception of drift gillnet and troll gear. The drift gillnet component of this fishery is listed 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; and the troll component of this fishery is listed 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.

Observer information is available for which species/stocks are incidentally killed or injured in the high seas longline component of this fishery; therefore, NMFS lists the marine mammal species that have been documented killed or injured in the high seas longline component of Atlantic HMS fisheries in Table 3. This list of species/stocks is identical to those listed as taken in the Category II ''CA pelagic longline fishery'' operating in U.S. waters. This is because the 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.

For those fisheries where no interaction data (observer or other data) exist on the high seas, NMFS lists 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 adds all non-coastal marine mammal species killed or injured in the Category I ''CA/OR thresher shark/swordfish drift gillnet (≥14 in. mesh) fishery'' as injured or killed in the high seas drift gillnet component of Pacific HMS fisheries. NMFS adds all non-coastal marine mammal species killed or injured in the Category II ''CA tuna purse seine fishery'' as injured or killed in the high seas purse seine component of the Pacific HMS fisheries.

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 using gear other than longline, drift gillnet, and purse seine, NMFS lists the marine mammal species killed or injured in these fisheries as ''undetermined'' in Table 3.

High Seas Western Pacific Pelagic Fisheries

The high seas Western Pacific pelagic fisheries are added to the LOF. All gear targeting Western Pacific pelagic species are listed as Category II, with the exception of deep-set longline gear. The deep-set longline component of this fishery is listed as a Category I because it is an extension of the Category I ''HI deep-set (tuna target) longline/set line fishery'' operating in U.S. waters. 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.

NMFS adds all non-coastal marine mammal species/stocks killed or injured in the Category I ''HI deep-set (tuna target) longline/set line fishery'' as injured or killed in the deep-set longline component operating on the high seas. NMFS adds all non-coastal marine mammal species killed or injured in the Category II ''HI shallow-set (swordfish target) longline/set line fishery'' as injured or killed in the shallow-set longline 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 paragraph. Given the lack of data on marine mammal abundance and interactions with high seas Western Pacific pelagic fisheries using gear other than longline, NMFS lists the marine mammal species killed or injured in these fisheries as ''undetermined'' in Table 3.

High Seas South Pacific Albacore Troll Fisheries

The high seas South Pacific albacore troll fisheries are added to the LOF, with all gear types listed as Category II. 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.

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 listed 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

The high seas South Pacific tuna fisheries (as authorized under the SPTT) are added to the LOF. All gear types are listed as Category II because, 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. There are 26 valid HSFCA permits for vessels participating in the South Pacific tuna fishery. This number accurately reflects 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.

While available 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

The high seas Antarctic Living Marine Resources (or CCAMLR) fisheries are added to the LOF. All gear types are listed as Category II because, 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. 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. NMFS has included the trawl and gillnet components of the CCAMLR fisheries (the gear types used by U.S. vessels in the recent past) on Table 3 with a zero indicating the number of HSFCA permits for these fishery components.

Observer information is available for which species are incidentally killed or injured in CCAMLR fisheries. Based on observer data of interactions with trawl gear, NMFS adds Antarctic fur seals as incidentally killed or injured in the trawl component of the fishery. There are no documented injuries or mortalities of other marine mammal species and U.S. vessels when using other gear types in the CCAMLR region; therefore, Table 3 lists the marine mammal species killed/injured in longline gear as ''none documented.''

Commercial Fisheries in the Pacific Ocean

Fishery Classification

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

The Category I ''HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery'' is split into 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.'' The ''HI deep-set (tuna target) longline/set line fishery'' is classified as a Category I fishery, and the ''HI shallow-set (swordfish target) longline/set line fishery'' is classified as a Category II fishery.

CA Halibut/White Seabass and Other Species Set Gillnet (>3.5 in. mesh) Fishery

The ''CA halibut/white seabass and other species set gillnet (>3.5 in. mesh)

fishery'' is recategorized from a Category I to a Category II fishery.

West Coast Trap/Pot Fisheries

NMFS reclassifies multiple West Coast trap and pot fisheries from Category III to Category II based on interactions with humpback whales (CA/OR/WA stock).

The ''CA spot prawn pot fishery'' is split from the Category III ''CA lobster, prawn, shrimp, rock crab, fish pot'' (renamed the ''CA spiny lobster, coonstrip shrimp, rock crab, tanner crab pot or trap'' in this final rule) and listed on the LOF as a Category II fishery. The estimated number of vessels or participants in this fishery is 29. In addition to humpback whales, gray whales remain listed as injured or killed in this fishery because gray whales have been listed as injured or killed in this fishery on past LOFs.

The ''WA/OR/CA sablefish pot fishery'' is elevated from Category III to a Category II fishery. The estimated number of vessels or participants in this fishery is 155, including both limited and open access permits (there are 32 limited access permits).

The ''OR Dungeness crab pot fishery'' is split from the Category III ''WA/OR/CA crab pot fishery'' and elevated to Category II. The estimated number of vessels or participants in this fishery is 433 (433 permits exist, 364 landings were made in 2006). In addition to humpback whales, gray whales remain listed as injured or killed in this fishery because gray whales have been listed as injured or killed in this fishery on past LOFs.

The ''CA Dungeness crab pot fishery'' is split from the Category III ''WA/OR/CA crab pot fishery'' and elevated to Category II. The estimated number of vessels or participants in this fishery is 625 (625 permits exist, 435 landings were made in 2006). In addition to humpback whales, gray whales remain listed as injured or killed in this fishery because gray whales have been listed as injured or killed in this fishery on past LOFs.

The ''WA Dungeness crab pot fishery'' is split from the Category III ''WA/OR/CA crab pot fishery'' and remains a Category III fishery. In addition to humpback whales, gray whales remain listed as injured or killed in this fishery because gray whales have been listed as injured or killed in this fishery on past LOFs.

Addition of Fisheries to the LOF

The ''HI deep-set (tuna target) longline/set line fishery'' is added to the LOF as a Category I fishery.

The ''HI shallow-set (swordfish target) longline/set line fishery'' is added to the LOF as a Category II fishery.

The ''CA spot prawn trap fishery'' is added to the LOF as a Category II fishery.

The ''CA Dungeness crab pot fishery'' is added to the LOF as a Category II fishery.

The ''OR Dungeness crab pot fishery'' is added to the LOF as a Category II fishery.

The ''WA Dungeness crab pot fishery'' is added to the LOF as a Category III fishery.

The ''AK statewide miscellaneous finfish pot fishery'' is added to the LOF as a Category III fishery.

The ''AK shrimp pot, except Southeast fishery'' is added to the LOF as a Category III fishery.

Removal of Fisheries From the LOF

The Category II ''AK Metlakatla/Annette Island salmon drift gillnet fishery'' is removed from the LOF.

Fishery Name and Organizational Changes and Clarifications

The Category II ''CA angel shark/halibut and other species set gillnet (>3.5 mesh size) fishery'' is renamed the ''CA halibut/white seabass and other species set gillnet (>3.5 in. mesh) fishery.''

The prawn portion of the Category III ''CA lobster, prawn, shrimp, rock crab, and fish pot fishery'' is split into a separate fishery, the Category II ''CA spot prawn fishery,'' and the remaining portion of the Category III fishery is renamed the ''CA spiny lobster, coonstripe shrimp, rock crab, tanner crab pot or trap fishery.''

The Category III ''WA/OR/CA crab pot fishery'' is split into three fisheries, the Category II ''CA Dungeness crab pot'' and ''OR Dungeness crab pot'' fisheries, and the Category III ''WA Dungeness crab pot fishery.''

The Category III ''CA finfish and shellfish live trap/hook-and-line fishery'' is renamed the ''CA nearshore finfish live trap/hook-and-line fishery.''

The Category III ''AK state-managed waters groundfish longline/set line (including sablefish, rockfish, and miscellaneous finfish'' is renamed the ''AK state-managed waters longline/set line (including sablefish, rockfish, lingcod, and miscellaneous finfish.''

The Category III ''AK North Pacific halibut handline and mechanical jig fishery'' is renamed the ''AK North Pacific halibut handline/hand troll and mechanical jig fishery.''

The Category III ''AK miscellaneous finfish handline and mechanical jig fishery'' is renamed the ''AK miscellaneous finfish handline/hand troll and mechanical jig fishery.''

The Category III ''AK salmon purse seine (except Southeast AK, which is in Category II) fishery'' is renamed the ''AK salmon purse seine (excluding salmon purse seine fisheries listed as Category II).

The superscript ''1'' following Steller sea lion (Western U.S.) is removed under the Category II ''AK Bristol Bay salmon drift gillnet fishery'' in Table 1. The superscript ''2'' remains after the fishery's name in Table 1.

Number of Vessels/Persons

The estimated number of vessels or persons in the Category II ''CA squid purse seine fishery'' is updated to 64.

The estimated number of vessels or persons in the Category III ''CA spiny lobster, coonstripe shrimp, rock crab, tanner crab pot or trap fishery'' is updated to 530.

The estimated number of vessels or persons in the Category III ''OR/CA hagfish pot or trap fishery'' is updated to 54.

The estimated number of vessels or persons in the majority of the AK Category II fisheries are updated: AK Southeast salmon drift gillnet fishery to 476; AK Yakutat salmon set gillnet to 166; AK Prince William Sound salmon drift gillnet to 537; AK Cook Inlet salmon drift gillnet to 571; AK Cook Inlet salmon set gillnet to 738; AK Peninsula/Aleutian Islands salmon drift gillnet to 162; AK Peninsula/Aleutian Islands salmon set gillnet to 115; AK Bristol Bay salmon drift gillnet to 1,862; AK Bristol Bay salmon set gillnet to 983; AK Southeast salmon purse seine fishery to 415; AK Bering Sea, Aleutian Islands pollock trawl to 95; AK Bering Sea, Aleutian Islands Pacific cod trawl to 54; AK Bering Sea, Aleutian Islands finfish trawl to 34.

The estimated number of vessels or persons in the majority of the AK Category III fisheries are updated: AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet to 1,824; AK roe herring and food/bait herring gillnet to 986; AK miscellaneous finfish set gillnet to 0; AK salmon purse seine (except Southeast AK, which is Category II) to 936; AK salmon beach seine to 31; AK roe herring and food/bait herring purse seine to 361; AK roe herring and food/bait herring beach seine to 4; AK octopus/squid purse seine to 0; AK salmon troll to 2,045; AK North Pacific halibut/bottom fish troll to 1,302 (102 AK); AK state-managed waters groundfish longline/set line (including sablefish, rockfish, and miscellaneous finfish) to 1,448; AK Gulf of Alaska rockfish longline to 0; AK Gulf of Alaska

sablefish longline to 291; AK Bering Sea, Aleutian Islands Greenland turbot longline to 29; AK Bering Sea, Aleutian Islands rockfish longline to 0; AK Bering Sea, Aleutian Islands sablefish longline to 28; AK halibut longline/set line (State and Federal waters) to 2,521; AK octopus/squid longline to 2; AK shrimp otter and beam trawl (statewide and Cook Inlet) to 32; AK Gulf of Alaska flatfish trawl to 41; AK Gulf of Alaska Pacific cod trawl to 62; AK Gulf of Alaska pollock trawl to 62; AK Gulf of Alaska rockfish trawl to 34; AK Bering Sea, Aleutian Islands Atka mackerel trawl to 9; AK Bering Sea, Aleutian Islands Pacific cod trawl to 93; AK Bering Sea, Aleutian Islands rockfish trawl to 10; AK miscellaneous finfish otter or beam trawl to 317; AK food/bait herring trawl to 4; AK Bering Sea, Aleutian Islands Pacific cod pot to 68; AK Bering Sea, Aleutian Islands crab pot to 297; AK Gulf of Alaska crab pot to 300; AK Southeast Alaska crab pot to 433; AK Southeast Alaska shrimp pot to 283; AK octopus/squid pot to 27; AK snail pot to 1; AK North Pacific halibut handline/hand troll and mechanical jig to 228; AK miscellaneous finfish handline/hand troll and mechanical jig to 445; AK octopus/squid handline to 0; AK Southeast herring roe/food/bait pound net to 6; AK dungeness crab (hand pick/dive) to 2; AK herring spawn on kelp (hand pick/dive) to 266; AK urchin and other fish/shellfish (hand pick/dive) to 570; AK commercial passenger fishing vessel from to >7,000 (2,702 AK).

List of Species That Are Incidentally Killed or Injured

Harbor porpoise (central CA) are removed from the list of marine mammal species/stock incidentally killed/injured in the Category II ''CA halibut/white seabass and other species set gillnet (>3.5 mesh size) fishery.''

The following marine mammals species/stocks are removed from the list of species/stocks incidentally killed/injured in the Category I ''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).

Humpback whales (CA/OR/WA) are removed from the list of species/stocks incidentally killed/injured in the Category II ''WA Dungeness pot fishery.''

Humpback whales (CA/OR/WA) and sea otters (CA) are removed from the list of species/stocks incidentally killed/injured in the Category III ''CA spiny lobster, coonstripe shrimp, rock crab, tanner crab pot or trap fishery.''

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

The stock of common dolphin listed as incidentally killed or injured in the Category II ''CA squid purse seine fishery'' is changed from ''common dolphin, unknown'' to ''short-beaked common dolphin, CA/OR/WA'' and ''long-beaked common dolphin, CA'' to account for the uncertainty of the species observed seriously injured or killed in this fishery.

Bryde's whale, sperm whale, and pantropical spotted dolphin are removed from the list of species/stocks killed/injured in the Category I ''HI deep-set (tuna target) longline/set line fishery,'' and added to the list of species/stocks killed/injured in the Category II ''HI shallow-set (swordfish target) longline/set line fishery,'' to correct a typographical error in the proposed 2009 LOF.

Hawaiian monk seal is removed from the list of species/stocks killed/injured in the Category III ''HI tuna handline fishery.'' NMFS has never received a report of interactions between monk seals with tuna handline.

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

Addition of Fisheries to the LOF

The ''U.S. Atlantic, Gulf of Mexico trotline fishery'' is added to the LOF as a Category III fishery.

Fishery Name and Organizational Changes and Clarifications

Gulf of Mexico Menhaden Purse Seine Fishery

NMFS corrects a typographical error that has persisted since the 2006 LOF (71 FR 48802; August 22, 2006) and was not proposed in the proposed 2009 LOF (73 FR 33760, June 13, 2008). A superscript ''1'' following bottlenose dolphin (Western Gulf of Mexico coastal) is added under the Category II ''Gulf of Mexico menhaden purse seine fishery'' in Table 2, indicating that this stock is driving the categorization of this fishery. The 2006 LOF included a superscript ''1'' following bottlenose dolphin (Northern Gulf of Mexico coastal); however, a superscript ''1'' should have been included for both the Northern and the Western Gulf of Mexico coastal stocks.

Northeast Bottom Trawl Fishery

NMFS corrects a typographical error that has persisted since the 2005 LOF (71 FR 247; January 4, 2006). In the proposed 2005 LOF (70 FR 70094; December 2, 2004), NMFS proposed to add harbor porpoise (Gulf of Maine/Bay of Fundy) to the list of species/stocks incidentally taken in the Category II ''Northeast bottom trawl fishery.'' However, NMFS decided not to include this stock on the list based on a public comment stating that the animal taken in that fishery was badly decomposed and the trawl duration was only five hours (see comment/response 33 in the final 2005 LOF). While this stock has never been considered incidentally killed/injured in this fishery, it inadvertently remained listed in Table 2 of the LOF. NMFS corrects that error at this time by removing harbor porpoise (Gulf of Maine/Bay of Fundy) from Table 2 following the ''Northeast bottom trawl fishery.''

Northeast Sink Gillnet Fishery

The definition of the Category I ''Northeast sink gillnet fishery'' is amended to clarify and correct the boundary description by replacing ''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 * * *'' with ''* * * 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

The definition of the Category II ''Northeast anchored float gillnet fishery'' is amended to clarify and correct the boundary description by replacing '' * * * 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 * * *'' with '' * * * 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

The definition of the Category II ''Northeast drift gillnet fishery'' is amended to clarify and correct the boundary description by replacing ''* * * 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 * * *'' with '' * * * 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

The fishery description for the Category II ''Mid-Atlantic mid-water trawl fishery'' is replaced 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

The fishery description for the Category II ''Mid-Atlantic bottom trawl fishery'' is replaced 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, *Illex* 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 *Illex* 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 *Illex* occurs offshore, mainly in continental shelf and slope waters during summer months (June–September). The *Illex* 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

The fishery description for the Category II ''Mid-Atlantic haul/beach seine fishery'' is replaced with the following description: ''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 nylon. 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.

North Carolina 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 North Carolina. Therefore, small and large mesh nets constructed of monofilament and multifilament material will be considered part of the Category I ''Mid-Atlantic gillnet fishery.'' NMFS is not currently regulating this component of the ''Mid-Atlantic gillnet fishery'' (i.e., nets that are anchored to the beach and subsequently hauled onto the beach to retrieve the catch). NMFS will discuss the appropriate management measures for this fishery component with the Atlantic Large Whale Take Reduction Team in the future.

In addition to the North Carolina 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 North Carolina are different from haul seining in other areas, NMFS may consider splitting this fishery in the future.''

List of Species That Are Incidentally Killed or Injured

White-side dolphins (Western North Atlantic [WNA]) are added to the list of marine mammal species/stocks incidentally injured or killed in the Category II ''Mid-Atlantic bottom trawl fishery.''

Harbor seals (WNA) are added to the list of marine mammal species/stocks incidentally injured or killed in the Category II ''Northeast bottom trawl fishery.''

Bottlenose dolphins (WNA coastal) are added to the list of marine mammal species/ stocks incidentally injured or killed in the Category III ''FL spiny lobster trap/pot fishery.''

Bottlenose dolphins (WNA coastal) are added to the list of marine mammal species/stocks incidentally injured or killed in the Category III ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot fishery.''

List of Fisheries

The following tables set forth the final 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 an ''*'' 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 False killer whale, HI[1] Humpback whale, Central North Pacific Risso's dolphin, HI Short-finned pilot whale, HI Spinner dolphin, 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

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
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	64	Long-beaked common dolphin, CA Short-beaked common dolphin, CA/OR/WA 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] Pantropical spotted dolphin, stock unknown Risso's dolphin, stock unknown Sperm whale, 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:		
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
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 (excluding salmon purse seine fisheries listed as 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:		
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
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
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, 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
HI tuna handline	298	None documented
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
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 nearshore finfish 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 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[1]
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:		

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
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
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 False killer whale, HI Humpback whale, Central North Pacific Risso's dolphin, HI Short-finned pilot whale, HI Spinner dolphin, HI Striped dolphin, HI
Category II		
DRIFT GILLNET FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
Unspecified	1	Undetermined
GILLNET NEI FISHERIES:		
Pacific Highly Migratory Species	1	Undetermined
TRAWL FISHERIES:		
Atlantic Highly Migratory Species **	3	Undetermined

Pacific Highly Migratory Species **	14	Undetermined
CCAMLR	0	Antarctic fur seal
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:		
CCAMLR	0	None documented
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 Pantropical spotted dolphin, stock unknown Risso's dolphin, stock unknown Sperm whale, 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:		
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 HSFCA - High Seas Fishery Compliance Act. 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 fishing 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)

* Only applicable to portion of fishery in U.S. waters.

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

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 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. The MMPA registration process is integrated with existing state and Federal licensing, permitting, and registration programs. Therefore, 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 final 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 final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal injuries or 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 final 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 final rule would not make any significant change in the management of reclassified fisheries, and therefore, this final rule is not expected to change the analysis or conclusion of the 2005 EA. If NMFS takes a management action, for example, through the development of a TRP, NMFS will first prepare an environmental document, as required under NEPA, specific to that action.

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

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

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

Dated: November 24, 2008.

Samuel D. Rauch III,

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

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