(vi) Court/Jurisdiction.

(vii) The nature and circumstances surrounding the conviction.

(viii) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct.

(ix) Whether the individual has made full restitution for the felony.

(x) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

(6) Upon the request of the Contracting Officer, and prior to contract award, in addition to information described in paragraph (d)(5) of this clause, the business concern must provide such other documentation as is requested by the Contracting Officer to use in determining and evaluating ownership, control, or operation; the nature of the felonies committed; and such other information as is needed to make a decision on whether award should be made to the offeror under the Federal Protective Service Guard Contracting Reform Act of 2008. The refusal to timely provide such documentation may serve as grounds to preclude contract award.

(e)(1) *Privacy Statement.* The offeror shall provide the following statement to any individual whose information will be submitted in an award request pursuant to (d)(5) and (6) of this clause.

(2) *Privacy Notice.* The collection of this information is authorized by the Federal Protective Service Guard Contracting Reform Act of 2008 (Pub. L. 110–356) and Department of Homeland Security (DHS) implementing regulations at Homeland Security Acquisition Regulation (HSAR) 48 CFR 3009.171. This information is being collected to determine whether an individual that owns, controls, or operates the business concern submitting this offer has been convicted of a felony that would disqualify the offeror from receiving an award. This information will be used by and disclosed to DHS personnel and contractors or other agents who require this information to determine whether an award request should be approved or denied. Additionally, DHS may share this personal information with the U.S. Justice Department and other Federal and State agencies for collection, enforcement, investigatory, or litigation purposes, or as otherwise authorized. Submission of this information by the individual is voluntary, however, failure to provide it may result in denial of an award to the offeror. Individuals who wish to correct inaccurate information in or to remove their information from an offer that has been submitted should contact the business concern submitting the offer and request correction. Should individuals seek to correct inaccurate information or remove their information from an offer that has been submitted in response to a solicitation for FPS guard services prior to contract award, an authorized representative of the business concern submitting the offer must contact the contracting officer of record and request that the firm's offer be formally withdrawn or submit a correction to the award request. After contract award, it is recommended that an authorized representative of the business concern that submitted the inaccurate or erroneous information contact the contracting officer of record. The contracting officer will handle such requests on a case by case basis.

(f) *Disclosure.* The offeror under this solicitation represents that [Check one]:

__It is not a business concern owned, controlled, or operated by an individual convicted of a felony.

__It is a business concern owned, controlled, or operated by an individual convicted of a felony, and has submitted an award request pursuant to paragraph (d) of this clause.

(g) If an award request is applied for, the offeror shall attach the request with supporting documentation, to the bid or proposal. The supporting documentation may include copies of prior award requests granted to the offeror.

(h) The notification in this paragraph applies if this is an indefinite delivery/indefinite quantity contract, blanket purchase agreement, or other contractual instrument that may result in the issuance of task orders, calls or option to extend the terms of a contract. The Contractor must immediately notify the Contracting Officer in writing upon any felony conviction of personnel who own, control or operate a business concern as defined in paragraph (c) of this clause at any time during the performance of this contract. Upon notification of a felony conviction the Contracting Officer will review and make a new determination of eligibility prior to the issuance of any task order, call or exercise of an option.

(End of clause)

[FR Doc. E9–27330 Filed 11–13–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 090218194–91045–02]

RIN 0648–AX65

List of Fisheries for 2010

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2010, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2010 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 January 1, 2010.

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 email to *David__Rostker@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Melissa Andersen, Office of Protected Resources, 301–713–2322; David Gouveia, Northeast Region, 978–281–9280; Anne Ney, Southeast Region, 727–551–5758; 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:

NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Marcia Hobbs;

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

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: Protected Resources Division;

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 classification of a fishery on 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 and Stocks are Included as Incidentally Killed or Injured in a Fishery?

The LOF includes a list of marine mammal species and stocks incidentally killed or injured in each commercial fishery. To determine which species and stocks are included as incidentally killed or 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 interaction with commercial fishing operations. NMFS also reviews other sources of new information, including observer data, stranding data, and fisher self-reports.

When reliable information and sufficient levels of observer coverage are available, the most recent five years of data are used to determine whether a species or stock should be added to, or deleted from, the list of species and stocks incidentally killed or injured in each commercial fishery. In the absence of reliable information on the level of mortality or 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 (FMP) or a take reduction plan (TRP)). NMFS will provide case-specific justification in the LOF for changes to the list of species and stocks incidentally killed or injured.

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

Data obtained from observers and the level of observer coverage are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. The best available information on the level of observer coverage, and the spatial and temporal distribution of observed marine mammal interactions, is presented in the SARs. Starting with the 2005 SARs, each SAR includes an appendix with detailed descriptions of each Category I and II fishery in the LOF, including observer coverage. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because, under the

MMPA, Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Information presented in the SARs' appendices includes: level of observer coverage, target species, levels of fishing effort, spatial and temporal distribution of fishing effort, characteristics of fishing gear and operations, management and regulations, and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resource's website at: *http://www.nmfs.noaa.gov/pr/sars/*. Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: *http://www.st.nmfs.gov/st4/nop/*.

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

This 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. 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). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (e.g., trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. 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 considered a separate fishery, but an extension of the fishery operating within U.S. waters (listed in Table 1 or 2). In these fisheries, a single vessel may set both within the U.S. Exclusive Economic Zone (EEZ) and on the high seas during a single fishing trip. 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.

HSFCA permits are valid for five years, during which time FMPs can change. Therefore, some fishers may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008).

Are Treaty Tribal Fisheries Included on the LOF?

In the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995) NMFS concluded that treaty tribal fisheries are conducted under the authority of the Indian treaties; the MMPA's requirements in section 118 do not apply to treaty Indian tribal fisheries. NMFS explained this decision in the final rule stating (the remaining text in this paragraph is quoted direction from the final rule at 60 FR 45086, August 30, 1995), '' the rights to fish and hunt are already secured separately for Northwest tribes pursuant to their treaties with the United States. NMFS reviewed the relationship of the Northwest Indian treaties to the MMPA and did not find clear evidence that Congress intended to abrogate treaty Indian rights. Section 14 of the Amendments to the MMPA (Public Law No. 103–238) states 'Nothing in this Act, including any amendments to the Marine Mammal Protection Act of 1972 made by this Act -- alters or is intended to alter any treaty between the United States and one or more Indian tribes.' This provision clarifies that existing treaty Indian fishing rights are not affected by the amendments to the MMPA. Therefore, tribal fisheries are conducted under the authority of the Indian treaties rather than the MMPA, and the MMPA's mandatory registration systems do not apply to treaty Indian fishers operating in their usual and accustomed fishing areas. Since inclusion of the treaty Indian fisheries in the LOF would also establish an obligation to obtain an MMPA registration under section 118, NMFS has deleted reference to tribal fisheries in the LOF. The registration requirements for Category I or II fisheries will not apply to treaty Indian tribes.'' (60 FR 45086, August 30, 1995.)

NMFS considered, among other things, the public comments received on the proposed 2010 LOF and the 1994 amendments to the MMPA and accompanying legislative history to re-evaluate its 1995 conclusion to exempt tribal fisheries from the LOF (60 FR 45086, August 30, 1995) should be changed due to *Anderson* v. *Evans*. NMFS determined that *Anderson* v. *Evans* did not alter NMFS' original analysis in the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995); therefore, the inclusion of tribal fisheries on the LOF at this time is not warranted. NMFS will continue to work on a government-to-government basis with the affected treaty tribal governments to gather data on injuries and mortalities of marine mammals incidental to tribal fisheries. Additional information on NMFS' decision to continue to exclude tribal fisheries from the LOF is provided below in the response to comments 1–5 in the section ''Comments and Responses.''

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 be registered with NMFS and obtain a marine mammal authorization to lawfully take a non-endangered and non-threatened marine mammal incidental to commercial fishing. Owners of vessels or gear engaged in a Category III fishery are not required to be registered with NMFS or obtain a marine mammal authorization.

What is the Registration Process?

NMFS has integrated the MMPA registration process, known as 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 are not required to submit registration or renewal materials directly under the MMAP. In the Pacific Islands, Southwest, Northwest, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate; in the Northeast and Southeast Regions, NMFS will issue vessel or gear owners notification of

registry and directions on obtaining an authorization certificate. 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, Southwest, 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 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 978–281–9328 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 state or Federal permit is required will receive notice of registry and may receive their authorization certificate and/or injury/mortality reporting form by contacting the Southeast Regional Office at 727–551–5758 or by visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/pr/pr.htm*) and following instructions for printing the necessary documents.

How Do I Renew My Registration Under the MMPA?

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

Vessel or gear owners participating in Southeast or Northeast regional fisheries may receive an authorization certificate 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 marine mammal that ingests fishing gear or any marine mammal 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. However, observer requirements will not be exempted for U.S. Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)) or vessels operating in North Carolina fisheries observed under the Alternative Platform Program. 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 TRP regulations. 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 through 229.36.

Sources of Information Reviewed for the Final 2010 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 three 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 2010 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), 2001 (67 FR 10671, March 8, 2002), 2002 (68 FR 17920, April 14, 2003), 2003 (69 FR 54262, September 8, 2004), 2004 (70 FR 35397, June 20, 2005), 2005 (71 FR

26340, May 4, 2006), 2006 (72 FR 12774, March 19, 2007), 2007 (73 FR 21111, April 18, 2008), and 2008 (74 FR 19530, April 29, 2009). The SARs are available at *http://www.nmfs.noaa.gov/pr/sars/*.

Fishery Descriptions

Beginning with the final 2008 LOF (72 FR 66048, November 27, 2007), NMFS describes each Category I and II fishery on the LOF. Below, NMFS describes the fisheries classified as Category I or II fisheries on the 2010 LOF that were not classified as such on a previous LOF (and therefore have not yet been defined on the LOF). Additional details for Category I and II fisheries operating in U.S. waters are included in the SARs, FMPs, and 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.

American Samoa Longline Fishery

The Category II ''American Samoa longline'' fishery operates in waters around American Samoa targeting tuna (mainly albacore, also skipjack, yellowfin and bigeye). Wahoo, sharks, billfish, and other miscellaneous pelagic species are also caught, with most of the sharks and billfish released. In 2000, the ''American Samoa longline'' fishery began to expand rapidly with the influx of large (more than 50 ft (15.2 m) overall length) conventional monohull vessels, similar to the type used in the Hawaii-based longline fisheries. Vessels over 50 ft (15.2 m) may set 1,500 2,500 hooks and have a greater fishing range and capacity for storing fish (8 40 metric tons). The fleet reached a peak of 66 vessels in 2001, and set a peak of almost 7,000 sets in 2002.

The rapid expansion of longline fishing effort within the EEZ waters around American Samoa prompted the Western Pacific Fishery Management Council (WPFMC) to develop a limited entry system for the fishery, implemented by NMFS in 2005. Under the limited access program, NMFS issued a total of 60 initial longline limited entry permits in 2005 to qualified candidates, spread among 4 vessel size classes (72 FR 10711, March 9, 2007): 22 permits issued in Class A (less than or equal to 40 ft (12.2 m) length); 5 in Class B (40–50 ft (12.2–15.2 m)); 12 in Class C (50–70 ft (15.2–21.3 m)); and 21 in Class D (more than 70 ft (21.3 m)). The limited entry program regulations cap the maximum number of permits to the 60 initial permits issued. Permits may be transferred, upgraded, and renewed. In 2008, the American Samoa longline fishery had 28 active vessels. Observers were first placed on American Samoa longline vessels in April 2006 to monitor protected species interactions, with observer coverage averaging approximately 6–8 percent each year.

Under the limited entry program, vessel operators must submit Federal longline logbooks, vessels over 40 ft (12.2 m) must carry observers if requested by NMFS, and vessels over 50 ft (15.2 m) must have an operational vessel monitoring system. In addition, vessel owners and operators of vessels registered to an American Samoa longline limited entry permit must attend a protected species workshop annually, carry and use dip nets, line clippers, and bolt cutters, and follow handling, resuscitation, and release requirements for incidentally hooked or entangled sea turtles (70 FR 69282, November 15, 2005). There are existing regulations intended to mitigate sea turtle incidental hookings, and in 2009 the WPFMC recommended additional measures be implemented to minimize interactions with green sea turtles, including modifications to gear to place hooks below 100 m (328 ft) depth and to increase observer coverage (WPFMC 144th Meeting, March 23–26, 2009). Current regulations include a prohibition on U.S. vessels greater than 50 ft (15.2 m) in length from using longline gear within 50 nmi around the islands of American Samoa. American Samoa longline fishery regulations can be found at 50 CFR 665.36–38.

HI Shortline Fishery

The Category II ''HI shortline'' fishery is a small-scale system operating off the State of HI, and targeting bigeye tuna (Thunnus obesus) or the lustrous pomfret (Eumigistes illustris). This fishery was developed to target these fish species when they concentrate over the summit of Cross Seamount (290 km (180 mi) south of the State of HI). The gear style is designed specifically to target the aggregating fish species over seamount structures. The primary gear type used is a horizontal main line (monofilament) less than 1 nmi long, and includes two baskets of approximately 50 hooks each. The gear is set before dawn and has a short soak time, with the gear retrieved about two hours after it is set. This fishery has no seasonal component and may operate year-round. There are no specific fishing permits issued for this fishery. However, all persons with a State of Hawaii Commercial Marine License (CML) may participate in any fishery, including the ''HI shortline'' fishery. Of those persons possessing CMLs, shortline participation has changed from 5 to 11 vessels during 2003–2008. From 2003–2008, there was an average of 135,757 pounds (lbs) of fish landed each year. In 2008 alone, 104,152 lbs of fish were landed. Currently, there is no reporting system in place to document potential marine mammal interactions in this fishery. However, there are anecdotal reports of interactions off the north side of the island of Maui, but the species and extent of interactions are unknown.

Comments and Responses

NMFS received 11 comment letters on the proposed 2010 LOF (74 FR 27739, June 11, 2009). Comments were received from the California Department of Fish and Game, California Wetfish Producers Association, Center for Biological Diversity, Columbia River Inter-Tribal Fish Commission, Eighteen Western Washington Indian Tribes, Garden State Seafood Association, Hawaii Longline Association, Makah Tribal Council, Makah Tribe's marine mammal biologist, Marine Conservation Alliance, and Marine Mammal Commission. Comments on issues outside the scope of the LOF were noted, but are not responded to in this final rule.

Comments on Tribal Treaty Fisheries Inclusion on the 2010 LOF

During the public comment phase for the then-proposed 2009 LOF, NMFS received a comment requesting the 2009 LOF be amended to include tribal fisheries. The commenter stated that ''in light of the subsequent holding of the Ninth Circuit in *Anderson* v. *Evans*...finding that the MMPA applies to the Makah application to the gray whale hunt NMFS' 1995 conclusion exempting tribal fisheries from the LOF and the Section 118 authorization process is no longer valid'' (73 FR 73039, December 1, 2008; comment/response 4). In response to this 2009 LOF comment, NMFS included a request for public comment in the proposed 2010 LOF (74 FR 27739, June 11, 2009) on whether or not to include treaty tribal fisheries on future LOFs. Below, NMFS summarizes each comment received on the 2010 proposed LOF related to tribal fisheries and issues one response following the collective tribal fisheries comments.

Comment 1: The Center for Biological Diversity (CBD) reiterated a comment on the 2009 LOF (73 FR 73039, December 1, 2008; comment/response 4), noting that in an earlier decision the Ninth Circuit Court of Appeals determined that MMPA requirements applied to the Makah application to hunt gray whales (*Anderson* v. *Evans*, 371 F.3d 475 (9th Cir. 2004)). The CBD stated that the decision demonstrated that MMPA requirements can be harmonized with

treaty rights. Therefore, the CBD encouraged NMFS to move forward with determining how best to harmonize tribal fishing and treaty rights with MMPA requirements such that all fisheries operating in US waters are included in the LOF and categorized as I, II or III, as appropriate.

Comment 2: The Marine Mammal Commission (MMC) recommended NMFS (1) include tribal fisheries on the LOF, (2) revise its regulations implementing section 118 (e.g., 50 C.F.R. § 229.1 (d)) to clarify that treaty tribal fisheries are subject to the requirements of the MMPA, including section 118, and (3) begin working with the affected tribes to integrate the registration process with existing licensing or permitting systems if it appears that some tribal fisheries will be listed as category I or category II fisheries.

Comment 3: The Makah Tribe presented data indicating that tribal incidental takes of marine mammals do not present any conservation issues notwithstanding NMFS' 1995 decision to exclude treaty tribal fisheries from the LOF. The Makah Tribe compiled data regarding incidental take in its treaty fisheries and requires that all mortality or injury resulting from an incidental take, required in Makah Tribal regulations to be reported to the Tribe, and submits an annual report to NMFS. Records of these reports have been kept since the Tribe hired a marine mammal biologist in 2003. In general the rate of incidental take of marine mammals during fishing operations is low. From 2003–2009, the Makah Tribal fisheries incidentally killed 12 harbor seals (1 in 2003, 6 in 2004, 4 in 2008, 1 in 2009), 1 Dall's porpoise (in 2004), 5 harbor porpoise (2 in 2004, 3 in 2008), 6 unknown small odontocetes (in 2005), 1 Steller sea lion (in 2008), 1 unidentified sea lion (in 2008), and 2 sea otters (in 2004). One unidentified whale and one gray whale were successfully released after entanglement (in 2005 and 2009, respectively).

The Makah tribe noted that, despite a long history of interactions between Makah Tribal fishers and marine mammals, these animals remain abundant, as indicated by NMFS' SARs. Observed take of marine mammals by the Makah Tribe's treaty fisheries is well below PBR for each stock. In addition, populations of marine mammal stocks which are most likely to interact with Makah tribal fisheries have either increased or remained stable since the MMPA was amended in 1994 and NMFS determined that treaty tribal fisheries would not be included in the LOF: CA sea lions have increased 5.6 percent/year since the 1970s; WA/OR stock of harbor seals has been stable since 1996; Inland WA stock of harbor seals has been stable at carrying capacity since 1994; Outer coast stock of harbor porpoises has been stable; Inland WA stock of harbor porpoise 2002 population estimate is three times more than the 1996 estimate; Eastern stock of Steller sea lions increased 3.1 percent/year (with regional variances); and WA stock of sea otters increased at 8 percent/year.

Comment 4A: The Makah Indian Tribe outlined three arguments (comments 4A, 4B, and 4C in this final rule) for the continued exclusion of treaty tribal fisheries from the LOF, based on its experience with the MMPA and as a party to *Anderson* v. *Evans*. The Makah Indian Tribe also joined and fully incorporated the comments in the joint tribal letter submitted by eighteen other Western Washington treaty tribes (see comments 5A, 5B, and 5C in this final rule) asserting that NMFS' 1995 rule interpreting the relationship between the Tribe's treaty-reserved right to take fish and Section 118 of the MMPA has not been affected by *Anderson* v. *Evans* and continues to be valid. Therefore, the Makah Tribe recommends that NMFS reaffirm its 1995 decision that treaty tribal fisheries are not subject to the MMPA's mandatory registration and that treaty tribal fisheries will not be included in the LOF.

The Makah Tribe's first argument for the continued exclusion of treaty tribal fisheries from the LOF was that the proper reading of the 1994 MMPA Amendments' treaty savings clause (section 14) protects incidental take of marine mammals by tribal fishers because the treaty fishing right, as understood by the Indian signatories, includes the right to take marine mammals incidental to tribal fisheries.

Comment 4B: The Makah Tribe's second argument for the continued exclusion of treaty Tribal fisheries from the LOF was that *Anderson* v. *Evans* was wrongly decided (a position which the United States has also repeatedly expressed) and, therefore, should not be extended to the LOF. The Makah Tribe asserted that although *Anderson* v. *Evans* addressed direct take of marine mammals such as the Makah gray whale hunt, by its own terms it does not apply to the question of incidental take in treaty tribal fisheries. Therefore, the Makah Tribe believed NMFS need not and should not extend the decision to the issues of mandatory registration and inclusion in the LOF.

During the *Anderson* v. *Evans* case, the United States took the position that the panel opinion was incorrectly based on numerous fundamental errors in reaching its conclusion. In the Makah Tribe's opinion, if NMFS were to extend *Anderson* v. *Evans* to the LOF issue, it would further reinforce the panel's numerous incorrect applications of settled precedent and directly contradict the United States' ongoing disagreement with the case. Moreover, the Makah Tribe concluded that it would substantially undermine the Makah's and other western Washington Tribes' treaty rights notwithstanding their express protection by the 1994 Amendments. The Makah Tribe believed such a decision would contravene Congress's express intent.

Comment 4C: The Makah Tribe's third argument for the continued exclusion of treaty Tribal fisheries from the LOF was that the Makah Tribe does and will continue to work with NMFS to protect marine mammals. The Makah Tribe noted that NMFS' 1995 rule excluding treaty tribal fisheries from the LOF was based in part on the extensive cooperation between the tribes and NMFS in managing tribal fisheries, including their interactions with marine mammals (See 60 FR at 45096, Aug. 30, 1995). The Makah Tribe noted that in the 1995 final rule, NMFS found that tribal self-regulation and cooperation with NMFS were instrumental to the agency achieving its responsibilities to protect marine mammals.

Comment 5A: NMFS received two separate letters, each representing multiple Washington Indian tribes that were similar to each other in the arguments presented. Therefore, the two comments presented in the two letters are summarized together below. The first letter represented the comments of the Columbia River Inter-Tribal Fish Commission (Nez Perce, Umatilla, Warm Springs and Yakama Tribes), the second letter represented the joint comments of eighteen Indian Tribes of western Washington State (Lummi Nation, Quinault Indian Nation, Swinomish Indian Tribal Community, and Nooksack, Tulalip, Suquamish, Squaxin Island, Nisqually, Puyallup, Sauk-Suiattle, Skokomish, Muckleshoot, Port Gamble, Jamestown, Lower Elwha, Upper Skagit, Quileute, and Stillaguamish Indian Tribes), collectively, the ''Tribes.'' The Tribes outlined three arguments (comments 5A, 5B, and 5C in this final rule) asserting that NMFS' 1995 conclusion that treaty fisheries are properly excluded from the LOF (60 FR 45086, August 30, 2009; at 45096) was correct, and remains correct.

The Tribes' first argument was that NMFS' 1995 conclusion remains correct

because the Tribes' rights are reserved by various treaties and the U.S. has broad trust responsibility to the Tribes.

Comment 5B: The Tribes' second argument was that NMFS' 1995 conclusion regarding Tribal fisheries remains correct because it is not affected by the rulings of the Ninth Circuit in *Anderson* v. *Evans*. The Tribes asserted that *Anderson* v. *Evans* involved the Makah Tribe's exercise of its express whaling rights in the Treaty of Neah Bay, and was wholly unrelated to the Makah Tribe's - or any other Tribes' - treaty right to take fish. The Tribes argued that the *Anderson* v. *Evans* court did not address the applicability of the 1994 MMPA amendments to treaty fisheries or the exercise of any other treaty rights, but instead focused solely on the applicability of the MMPA's general take prohibition, which has no Indian treaty savings clause, to the Makah Tribe's gray whale hunt. The Tribes asserted that as a result of the narrow scope of the case, the court did not address - nor did it have any reason to address - the MMPA's provisions governing incidental take of marine mammals in commercial fisheries, much less treaty tribal fisheries. In the Tribes' opinion, because *Anderson* v. *Evans* did not address Section 118 of the Act, the 1994 amendments (including the treaty savings clause) or the 1995 rule, it is inapplicable to the 2010 LOF rulemaking. The Tribes also asserted that the incidental take of marine mammals in treaty fisheries is well within the treaty rights protected by the 1994 treaty savings clause, a statute which must be construed liberally in favor of the Indians.

Comment 5C: The Tribes' third argument was that NMFS' 1995 conclusion regarding Tribal fisheries remains accurate because the Tribes' regulate their fisheries (including interactions with marine mammals) and NMFS retains authority to regulate tribal fisheries should the principle of conservation necessity deem it necessary. In the Tribes' opinion, NMFS need not take the radical step of reversing its 1995 rule with respect to treaty tribal fisheries and the LOF because, as a practical and legal matter, the agency is fully capable of protecting marine mammals under the existing rule. Finally, the Tribes noted that, just as in 1995 when NMFS asserted its authority to regulate tribal fisheries under the treaty rights principle of conservation necessity, NMFS retains that option should the impact of treaty tribal fisheries on certain marine mammal species reach the threshold to apply the conservation necessity principle. Thus, NMFS retains the authority to regulate treaty fisheries under appropriate circumstances.

Response: In the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995) NMFS concluded that treaty tribal fisheries are conducted under the authority of Indian treaties; therefore, the MMPA's requirements in section 118 do not apply to treaty Indian tribal fisheries. NMFS explained this decision in the 1995 final rule stating (the remaining text in this paragraph is quoted directly from the final rule at 60 FR 45086, August 30, 1995), '' the rights to fish and hunt are already secured separately for Northwest tribes pursuant to their treaties with the United States. NMFS reviewed the relationship of the Northwest Indian treaties to the MMPA and did not find clear evidence that Congress intended to abrogate treaty Indian rights. Section 14 of the Amendments to the MMPA (Public Law No. 103–238) states ''Nothing in this Act, including any amendments to the Marine Mammal Protection Act of 1972 made by this Act -- alters or is intended to alter any treaty between the United States and one or more Indian tribes. '' This provision clarifies that existing treaty Indian fishing rights are not affected by the amendments to the MMPA. Therefore, tribal fisheries are conducted under the authority of the Indian treaties rather than the MMPA, and the MMPA's mandatory registration systems do not apply to treaty Indian fishers operating in their usual and accustomed fishing areas. Since inclusion of the treaty Indian fisheries in the LOF would also establish an obligation to obtain an MMPA registration under section 118, NMFS has deleted reference to tribal fisheries in the LOF. The registration requirements for Category I or II fisheries will not apply to treaty Indian tribes.'' (60 FR 45086, August 30, 1995.)

NMFS considered the public comments received on the proposed 2010 LOF, existing Indian treaties providing rights for tribal fisheries, the statutory provisions and context of the MMPA, and the legislative history of the 1994 amendments to the MMPA in evaluating whether the 1995 decision to exempt treaty tribal fisheries from the LOF should be changed due to *Anderson* v. *Evans*, 371 F.3d 475 (9th Cir. 2004). NMFS has determined that the facts and holding of *Anderson* v. *Evans* do not alter NMFS' original analysis in the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995). *Anderson* v. *Evans* applied to directed hunt of marine mammals and not incidental take of marine mammals by fishers. Section 118 of the MMPA specifically regulates incidental take of marine mammals by commercial fishers. The court in *Anderson* v. *Evans* did not address the treaty savings clause, which restricts the application of section 118 in the context of tribal treaty rights. In addition, NMFS continues to adhere to a policy of implementing the Federal trust responsibility by protecting treaty fishing rights of tribes. NMFS also will continue to work closely with the affected tribal governments on a government-to-government basis to gather data on injuries and mortalities of marine mammals incidental to tribal fisheries. In light of the above, NMFS did not include in the 2010 LOF the treaty tribal fisheries where tribal fishers exercise their treaty-protected fishing rights.

Based on the information presented in the final 2008 SARs and provided in Indian Tribal self-reports, there is no indication that any marine mammal bycatch associated with tribal fisheries presents a biological concern for applicable stocks. In the event this becomes an issue, NMFS would consider invoking the treaty-rights principle of ''conservation necessity'' to protect marine mammals.

The 2008 SARs show that nine species have been or are incidentally seriously injured and killed in Pacific Northwest treaty tribe fisheries, though many of these species have not been seriously injured or killed in recent years. All of the takes by tribal fisheries listed in the 2008 SARs are from non-depleted stocks of marine mammals. One take occurring after publication of the 2008 SARs was from a depleted stock. Below is a summary of the information provided in the 2008 SARs as well as information available from tribal self-reporting since publication of the 2008 SARs. Please see the 2008 SARs for more detailed information on these stocks and/or their interactions with treaty tribal fisheries.

(1) California sea lions: Current estimates of annual serious injury or mortality of this stock in tribal fisheries is zero to two animals/year. The stock's PBR level is 8,511.

(2) Harbor seal (OR/WA coast): The Northern WA marine set gillnet (tribal fishery in coastal waters) fishery seriously injured or killed 3 harbor seals in 2000 and 6 in 2004. The PBR for this stock is 1,343 and the minimum total fishery mortality and serious injury is less than 10 percent of the PBR. Therefore, fishery mortality and serious injury appears to be insignificant and approaching a zero mortality and serious injury rate.

(3) Harbor seal (WA inland waters): The Puget Sound treaty and non-treaty sockeye salmon gillnet fishery seriously injured or killed one harbor seal in 1994. The PBR for this stock is 771 and the minimum estimated fishery mortality and serious injury for this stock appears to be less than 10 percent of the PBR. Therefore, fishery mortality and serious injury appears to be insignificant and a approaching zero mortality and serious injury rate.

(4) Harbor Porpoise (Northern CA/Southern OR): One harbor porpoise mortality was documented for the Klamath River tribal salmon gillnet fishery in 1995. The PBR for this stock is 259 and the minimum estimated fishery mortality and serious injury for this stock appears to be less than 10 percent of the PBR. Therefore, fishery mortality and serious injury appears to be insignificant and approaching a zero mortality and serious injury rate.

(5) Harbor Porpoise (OR/WA coast): The Northern WA marine set gillnet (tribal fishery in coastal waters) fishery seriously injured or killed 3 harbor porpoise in 2000. In addition, 2 harbor porpoise (stock unknown) were reported killed in 2004 in a Makah Tribal fishery (Makah Tribe self-reports). Based on the range of the stock and the location of the Makah fisheries, the animals were either part of the OR/WA coast stock or the WA Inland Waters stock. The PBR for this stock is 277 and the minimum estimated fishery mortality and serious injury for this stock appears to be less than 10 percent of the PBR. Therefore, fishery mortality and serious injury appears to be insignificant and approaching zero mortality and serious injury rate.

(6) Harbor Porpoise (WA inland waters): The Puget Sound treaty and non-treaty sockeye salmon gillnet fishery seriously injured or killed one harbor porpoise in 1994. As stated above, 2 harbor porpoise (stock unknown) were reported killed in 2004 in a Makah Tribal fishery (Makah Tribe self-reports). Based on the range of the stock and the location of the Makah fisheries, the animals were either part of the OR/WA coast stock or the WA Inland Waters stock. The PBR for this stock is 63. While the status of the WA Inland Waters stock relative to its Optimum Sustainable Population level and population trends is unknown, the uncorrected estimate of abundance in Washington inland waters was significantly greater in 2002–2003 than in 1996.

(7) Dall's Porpoise (CA/OR/WA): The Puget Sound salmon drift gillnet tribal fishery seriously injured or killed one Dall's porpoise in the period from 2000 to 2004. The PBR for this stock is 318 and the minimum estimated fishery mortality and serious injury for this stock appears to be less than 10 percent of the PBR. Therefore, fishery mortality and serious injury appears to be insignificant and approaching a zero mortality and serious injury rate.

(8) Sea otter (WA): Sea otters (WA) are managed by the U.S. Fish and Wildlife Service. According to the Service's 2008 SAR, the Makah Northern Washington marine set-gillnet fishery seriously injured or killed 11 sea otters over a period of 13 years between 1988 and 2001 (2008 SAR) and 2 sea otters in 2004 (Makah Indian Tribe self-report). The stock has increased at a rate of 8 percent since 1989. The PBR for this stock is 11 per year. The Service was unable to determine whether the level of human-caused mortalities and serious injuries are insignificant and approaching a zero mortality and serious injury rate, based on a lack of information on the level of all sources of human-caused serious injury and mortality of this stock. However, the current population estimate of 1,125 is above the lower end of the Optimum Sustainable Population (60 percent of the maximum carrying capacity for the stock) (2008 SAR).

In addition to the information provided in the 2008 SARs, recent self-reports from the Makah Indian Tribe show additional serious injury and mortality of marine mammal stocks not yet represented in the SARs (see comment 3 above). The Makah Indian Tribe's self-reported data indicate that Makah fisheries interacted with three marine mammal stocks in 2008 and 2009.

(1) In 2009, a gray whale was entangled in a Makah fishery and released alive. The Eastern North Pacific gray whales are currently considered to be at the stock's Optimum Sustainable Population size (2008 SAR).

(2) In 2008, a Steller sea lion was killed in a Makah fishery. Based on the geographical range of the species, this animal was most likely from the Eastern stock of Steller sea lions, which is listed as threatened under the ESA and therefore considered depleted under the MMPA. Based on currently available data, the minimum estimated U. S. commercial fishery-related mortality and serious injury for Eastern Steller sea lions is less than that 10 percent of the stock's PBR of 200 per year; therefore, fishery mortality and serious injury appears to be insignificant and approaching a zero mortality and serious injury rate (2008 SAR). In addition, the Eastern Steller sea lion population has been consistently increasing at an overall annual rate of 3.1 percent throughout most of the range (Oregon to southeastern Alaska), which may indicate that this stock is reaching Optimum Sustainable Population size (2008 SAR).

(3) In 2008, 3 harbor porpoises were killed in a Makah fishery. While the stock is unknown, based on the geographic range of the stock and the location of the Makah fisheries, the animals were either part of the OR/WA coast stock or the WA Inland Waters stock. As stated above, the PBR for this OR/WA coast stock is 277 and the minimum estimated fishery mortality and serious injury for this stock appears to be less than 10 percent of the PBR. Therefore, fishery mortality and serious injury appears to be insignificant and approaching zero mortality and serious injury rate. Also stated above, while the status of the WA Inland Waters stock relative to its Optimum Sustainable Population level and population trends is unknown, the uncorrected estimate of abundance in Washington inland waters was significantly greater in 2002–2003 than in 1996 (2008 SARs).

NMFS will continue to work closely with the affected tribal governments on a government-to-government basis to gather data on injuries and mortalities of marine mammals incidental to tribal fisheries.

General Comments

Comment 6: The MMC recommended, based on their recommendation that tribal fisheries be included on the LOF (comment/response 2 above), that NMFS notify all treaty tribes believed to be engaged in hunting that any directed taking of marine mammals requires authorization under the MMPA. In reviewing the SARs prepared by NMFS under section 117 of the MMPA, the MMC noted that tribal hunting of harbor seals and California sea lions is included as a possible source of mortality. The MMC asserted that if such hunting is in fact ongoing, it would be subject to the same analysis as the proposed taking of gray whales at issue in *Anderson* v. *Evans* and would presumably require authorization under the MMPA.

Response: NMFS acknowledges this comment; however, this comment is not applicable to the LOF rulemaking at hand. The LOF categorizes fisheries based solely on the incidental, not intentional, serious injury and mortality to marine mammals. However, this comment is relevant to the SARs rulemaking process; therefore, NMFS will address this comment as part of the comments received during the comment period for the proposed 2009 SARs

(June 26, 2009–September 24, 2009; overlapping with the comment period for the proposed 2010 LOF).

Comment 7: The MMC recommended NMFS incorporate into the applicable SARs language similar to that included in the SAR for the Washington stock of sea otters prepared by the U.S. Fish and Wildlife Service to clarify that, in accordance with the ruling in *Anderson* v. *Evans*, any such taking requires authorization under the MMPA.

Response: NMFS acknowledges this comment; however, this comment is not applicable to the LOF rulemaking at hand. This comment is relevant to the SARs rulemaking process; therefore, NMFS will address this comment as part of the comments received during the comment period for the proposed 2009 SARs (June 26, 2009–September 24, 2009; overlapping with the comment period for the proposed 2010 LOF).

Comment 8: The Garden State Seafood Association (GSSA) requested that NMFS provide the number of vessels which reported landings for specific fisheries and gear types, along with estimated number of vessels or persons in individual fisheries currently reported on the LOF. The GSSA noted that this information would be specifically pertinent when considering the ''Mid Atlantic mid-water trawl'' fishery and the ''Northeast mid-water trawl'' fishery. The GSSA stated that recently the number of vessels who reported landings using a mid-water trawl in the Mid-Atlantic was approximately 17 vessels.

Response: NMFS agrees that including information on the number of vessels landing catches to compare to the estimated number of permit holders could be helpful for providing an accurate description of effort in each fishery. However, while this information is readily available for some fisheries, gathering this information in other fisheries may be more complicated. It is unclear if the information would be readily available from state agencies. NMFS will consult with the responsible state agencies and consider incorporating this additional data for each fishery in future LOFs.

Comment 9: The CBD reiterated a comment made on the 2009 LOF that the LOF lists over 40 fisheries that are known to interact with ESA-listed marine mammals. Only one fishery, the ''CA/OR thresher shark/swordfish drift gillnet'' fishery, has authorization to take ESA-listed marine mammals. The CBD asserted that each of the other fisheries is therefore operating in violation of the both the ESA and MMPA. The CBD further asserted that 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: NMFS received a similar comment on the 2009 LOF. As noted in NMFS' response to comments in the final 2009 LOF (73 FR 73032, December 1, 2008; comment/response 2), the CBD's comment refers to how NMFS authorizes takes of ESA listed marine mammals incidental to commercial fishing. The MMPA requires fishermen 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 fishermen 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 or 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 and 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 continuing this process of making these determinations in various fisheries on the LOF. Since the publication of the final 2009 LOF, NMFS has been reviewing available bycatch data for ESA-listed species in fisheries on the LOF.

Comment 10: The CBD reiterated a comment made on the 2008 and 2009 LOFs that the proposed 2010 LOF includes a table of fisheries subject to take reduction teams. While CBD found this table is very useful, they noted that there are Category I and II fisheries not yet subject to take reduction teams that also meet the statutory criteria for the convening of such teams. The CBD asserted that Category I and II fisheries not yet subject to take reduction teams which interact with strategic stocks must have take reduction teams promptly convened. The CBD viewed the Hawaii pelagic longline fishery as the highest priority for such a team as take continues to exceed PBR for the false killer whale.

Response: NMFS received similar comments on the 2008 and 2009 LOFs. As noted in the responses to comments on the 2008 LOF (72 FR 66048, November 27, 2007; comment/response 6) and 2009 LOF (73 FR 73032, December 1, 2008; comment/response 3), 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 and stocks whose level of incidental mortality and serious injury exceeds PBR, has a small population size, and are declining most rapidly, pursuant to MMPA section 118(f)(3).

Comment 11: The CBD reiterated a comment made on the 2009 LOF that the LOF once again includes ''Marine Aquaculture Fisheries'' as Category III fisheries. As stated in the past, the CBD does not believe aquaculture facilities are properly considered ''commercial fishing operations'' eligible for the take authorization contained in Section 118 of the MMPA. The CBD asserted that these facilities and activities, to the degree they interact with marine mammals, should be subject to the take prohibitions and permitting regimes contained in Section 101 of the MMPA.

Response: NMFS received a similar comment on the 2009 LOF. As noted in the responses to comments on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 5), 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 a ''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.'' Therefore, aquaculture fisheries are considered commercial fisheries that are managed under section 118 of the

MMPA, including inclusion on the annual LOF.

Comment 12: Consistent with its recommendations regarding the 2005 through 2009 LOFs, the MMC reiterated its previous recommendation that NMFS indicate the level of observer coverage for each fishery as part of the LOF.

Response: NMFS received similar comments on the 2005 through 2009 LOFs. As noted in the responses to comments on the 2005 LOF (71 FR 247, January 2, 2006; comment/response 6), 2006 LOF (71 FR 48802, August 22, 2006; comment response 4), 2007 LOF (72 FR 14466, March 28, 2007; comment/response 8), 2008 LOF (72 FR 66048, November 27, 2007; comment/response 4), and 2009 LOF (73 FR 73032, December 1, 2008; comment/response 1), NMFS continues to feel that the LOF is not the appropriate avenue for reporting this data because it will confuse rather than clarify if presented without all the associated information supplied in the SARs. Also, the LOF is not meant to be redundant to the SARs, but to base fishery classifications based on the information presented in the SARs.

NMFS continues to agree 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 developing summaries for each Category I and II fishery on the LOF, which include a description of each fishery, the history of the fishery and it's interactions with marine mammals, and the level of observer coverage in recent years. When completed, these summaries will be placed on the NMFS Office of Protected Resources website for easy public access, the citation for which will be included in each LOF. NMFS hopes to have these summaries available for reference during the public comment period on the 2011 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 Resources' 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 13: The Marine Conservation Alliance (MCA) stated that there is a significant legal and structural issue associated with the fishery categorization process which is completely ignored by NMFS. The MCA asserted that the formula NMFS has developed for placing fisheries into Category I, II, or III is arbitrary and capricious and may well violate the equal protection and due process clauses of the U.S. Constitution. The MCA asserted that if a fishery is the only one interacting with a strategic marine mammal stock and it is responsible for the serious injury or death of 1 percent of the PBR, the fishery is placed into Category III and subject to no further regulation under this section of the MMPA. However, the MCA stated that if a second and new fishery enters the scene and it is responsible for taking 10 percent or more of the PBR, then the first fishery, which a moment ago was determined to be having no impact on the marine mammal stock, is suddenly transformed into a fishery having a significant impact and a fishery that must be subject to additional regulation as a Category II fishery. The MCA asserted that the regulations provide that if only one fishery is interacting with a strategic marine mammal stock, and it is responsible for 10 percent or less of the PBR, then it is a Category III fishery since it, together with all other fisheries interacting with that marine mammal stock, is responsible for the serious injury and mortality of 10 percent or less of the PBR. The MCA asserts that classifying fisheries into Categories II or III based on such methodology is inconsistent and arbitrary.

Response: The current fishery classification system continues to be widely accepted as accurate by NMFS, the scientific community, environmental organizations and the fishing industry. As noted in a response to a similar comment on the 2008 LOF (72 FR 66048, November 27, 2007; comment/response 7), NMFS implemented the LOF fishery classification criteria in the final regulations to implement the 1994 amendments to the MMPA (60 FR 45086, August 30, 1995) after ample consideration of comments and suggestions from the public. NMFS refers the reader to the response to comments 5 through 9 in that rule for a detailed explanation of the reasoning for setting the dividing thresholds between Category II and III as 1 percent of PBR. NMFS also finalized an Environmental Assessment (EA) in August 1995, to analyze the impacts of the regulations implementing the 1994 amendments on the environment and the public. NMFS finalized a revised EA in December 2005 on the process of classifying U.S. commercial fisheries. A full copy of the updated 2005 EA can be found at *http://www.nmfs.noaa.gov/pr/pdfs/interactions/loflea.pdf*.

The fishery classification criteria consider the rate of incidental serious injury and mortality of marine mammals in commercial fisheries on a stock specific basis. Therefore, the rate of interaction of a fishery with a marine mammal stock with a low PBR can be significant even if it appears to be a minimal problem based on the size of the fishery or frequency of the interactions. The chosen approach allows NMFS to focus management actions where fishery interactions have a significant negative effect on the population. In addition to the 1 percent threshold, the definitions of Category II and III fisheries include qualitative criteria that allow the Assistant Administrator for Fisheries to place a fishery into Category II or III in the absence of reliable information. These qualitative criteria will allow the Assistant Administrator to take into consideration cases where the PBR level for a particular stock is very low and/or where the level of incidental interaction with commercial fisheries is low and not likely to delay the population's attainment of its Optimum Sustainable Population. See the general description of the two-tiered scheme and qualitative criteria that may be used to classify a fishery in the preamble in this rule under *Fishery Classification Criteria*.

Comments on High Seas Fisheries

Comment 14: The CBD reiterated previous concerns that the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) fisheries are listed in the LOF as Category II fisheries. The CBD asserted that the CCAMLR trawl fishery for krill should be listed as Category I. The CBD noted that a 2006 **Federal Register** notice indicated that observer data from three vessels, including a U.S. flagged vessel, reported that 95 fur seals were caught in the 2004/2005 season and 156 fur seals were caught in the 2003/2004 season in two CCAMLR areas (71 FR 39642, 39646, July 13, 2006). The CBD also noted that the Final Programmatic Environmental Impact Statement (EIS) for CCAMLR fisheries noted that a single U.S.-flagged krill vessel killed 138 Antarctic fur seals in a five-week period in 2004. The CBD asserted that this fishery is clearly not operating at a ''zero mortality and serious injury rate'' and must be listed in the LOF as a Category I fishery.

Response: NMFS received similar comments on the 2008 and 2009 LOFs.

As noted in the responses to comments on the 2008 LOF (72 FR 66048, November 27, 2007; comment/response 5) and 2009 LOF (73 FR 73032, December 1, 2008; comment/response 9), and in the final rule implementing measures adopted by CCAMLR (72 FR 48496, August 23, 2007; comment/response 29), 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 (50 CFR 229.2). While NMFS does not have sufficient information to calculate PBR level for marine mammal stocks found outside of the U.S. waters, including Antarctic fur seals, there is available information on the relative abundance of this species. 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. 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. Ninety-five fur seals were reported caught during fishing operations in 2005/2006, during which time no U.S. krill trawl vessel was operating. 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. In addition, no U.S. vessels have participated in this fishery in recent years and NMFS has not received any requests for a permit to participate in this fishery in the upcoming fishing season.

Comment 15: In comments on the proposed 2009 LOF, the CBD raised the concern that NMFS was treating single fisheries that have both a high seas and within-EEZ component as two separate fisheries for LOF purposes. The CBD was pleased that NMFS has clarified that the high seas operations of certain fisheries are extensions or components of existing fisheries operating in U.S. waters and therefore injure and kill the same marine mammal species and share the same LOF category. The CBD noted that this change reduces 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 of a single fishery) and therefore result in an underestimation of the true environmental effect, and LOF classification, of what is more properly considered a single fishery.

Response: NMFS will continue to include language in the preamble of future LOFs to clarify that 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 considered a separate fishery, but an extension of the same fishery operating within U.S. waters (listed in Table 1 or 2). NMFS will continue to designate those fisheries in Tables 1, 2, and 3 by an ''*'' after the fishery's name.

Comment 16: The MMC supported NMFS' inclusion of high-seas fisheries on the LOF. The MMC noted that the descriptions and evaluations of high-seas fisheries on the LOF highlight the lack of data on both the status and the incidental take of marine mammals outside the U.S. EEZ, a lack of data that is not surprising because current U.S. marine mammal stock assessment programs are focused on U.S. waters. The MMC commented that gathering data to support the management of high-seas fisheries will be difficult but will provide many ancillary benefits, including the development of useful tools for managing transboundary stocks. Therefore, the MMC reiterated its previous recommendation that NMFS develop and implement the research and monitoring programs needed to manage high-seas fisheries in a manner consistent with the requirements of the MMPA and the High Seas Driftnet Fishing Moratorium Protection Act.

Response: NMFS continues to agree that 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 (please see the 2009 LOF, 74 FR 73032, December 1, 2008; comment/response 8). NMFS is currently developing a strategic action plan for addressing international marine mammal conservation issues, including the need to gather the necessary data and strengthen international partnerships to effectively manage marine mammal bycatch in domestic and foreign high seas fisheries.

Comment 17: The Hawaii Longline Association (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 EEZ components. The HLA asserted that, as a threshold matter, the proposed LOF arbitrarily and inaccurately justifies its categorization of the high seas deep-set fishery on the assumption that the fishery interacts with the so-called ''pelagic'' false killer whale stock. The HLA noted that by NMFS's definition, the ''pelagic'' false killer whale stock occurs only in the U.S. EEZ - an area that does not include the high seas. The HLA stated that NMFS is arbitrarily picking and choosing when and where it will split or combine artificially-constructed false killer whale stocks for purposes of estimating abundance and establishing a given fishery's rate of interaction with the stock (and, hence, the fishery's LOF categorization). The HLA asserted that either NMFS must acknowledge that all false killer whales outside the ''insular'' zone belong to the Eastern North Pacific stock, the size of which is unknown, or it must consistently apply its arbitrary and scientifically unsound ''pelagic'' stock definition.

The HLA also commented that recent reports call into question the proposed LOF's assumption that the high seas deep-set fishery interacts with noncoastal marine mammals to the same extent as the U.S. EEZ fishery (Forney and McCracken, 2008), and suggest that false killer whales may be sufficiently abundant on the high seas between Hawaii and Palmyra Atoll that already low deep-set fishery interaction rates may warrant at least a Category II classification (Barlow and Rankin, 2007).

Response: This comment questions: (1) NMFS' criteria for classifying high seas fisheries in general; (2) The manner in which NMFS classifies the high seas portion of the HI-based deep-set

longline fishery (the ''Western Pacific pelagic deep-set longline'') based on serious injury and mortality levels of false killer whales (HI pelagic stock); and (3) Information regarding false killer whale stock delineation, and false killer whale abundance and fishery takes on the high seas. NMFS responded to a similar comment in the final 2009 LOF (73 FR 73032, December 1, 2008; comment/response 11).

(1) The first part of this comment questioned NMFS' criteria for classifying high seas fisheries. NMFS agrees that fisheries should be classified on the LOF according to their interactions with marine mammals. Although information on interaction rates (per trip or per set) are available for the high seas deep-set and shallow-set fisheries, PBR levels for marine mammal stocks on the high seas are not available. This is because, as mandated by Section 117 of the MMPA (16 U.S.C. 1386), NMFS prepares SARs and calculates PBR levels for marine mammal stocks occurring ''in waters under the jurisdiction of the United States.'' NMFS does not generally develop SARs or calculate PBR levels for 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.

As stated in the preamble of the proposed 2010 LOF (74 FR 27739, June 11, 2009), many fisheries operate in both U.S. waters and on the high seas, and fishing gears and methods in these fisheries remain virtually unchanged on either side of the 200 nmi EEZ boundary. In these cases, the high seas component of the fishery (Table 3) is not considered 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 a ''*'' after the fishery's name. While NMFS recognizes it is somewhat confusing to include different components of the same fishery in two tables on the LOF, listing the two components separately on two tables is necessary because of differences in the Federal permitting systems for vessels permitted to operate only within U.S. waters versus those permitted to operate within U.S. waters and on the high seas.

(2) The second part of this comment questioned the manner in which NMFS classifies the high seas portion of the HI-based deep-set longline fishery (the ''Western Pacific pelagic deep-set longline'') based on serious injury and mortality levels of false killer whales (HI pelagic stock). As stated in the preamble of the proposed 2010 LOF, 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). This also applies to fisheries that operate over a large geographic range. The entire fishery is categorized on the LOF at its highest level of classification, regardless of where marine mammal interactions occur within the fishery's range. Since the ''Western Pacific pelagic deep-set longline'' and ''HI deep-set (tuna target)'' are two components of the same fishery, distinguished from each other only by which side of the 200 nmi EEZ boundary they operate, and the component of the fishery operating in U.S. waters is classified as Category I, the high seas component of the fishery is also classified as Category I.

If NMFS receives information indicating that the high seas component of a fishery operates significantly differently than the component operating within U.S. waters, NMFS would consider splitting that fishery into two fisheries. However, the fishing operations of the high seas component of this fishery are not significantly different than fishing operations within the U.S. EEZ, and a single vessel may set both within the U.S. EEZ waters and on the high seas. Therefore, splitting these components into separate fisheries, and classifying them separately, is not warranted.

(3) The third part of this comment is related to information regarding false killer whale stock delineation, and false killer whale abundance and fishery takes on the high seas. The commenter is correct in that NMFS currently defines the pelagic stock of false killer whales as occurring from 75nmi to the EEZ boundary (2008 SAR). However, these animals are thought to move across the EEZ boundary into the high seas. NMFS truncated the stock boundary as ending at the 200nmi EEZ line because of the mandate in section 117 of the MMPA (16 U.S.C. 1386) for NMFS to create SARs and calculate PBR levels for marine mammal stocks occurring ''in waters under the jurisdiction of the United States.'' While NMFS does not gather detailed abundance information for the entire range of Hawaiian false killer whales, NMFS has estimated the density of false killer whales on the high seas within the area of operation of U.S. longline fisheries to be 0.049 animals per 100 km2, which is not dramatically different than the density within the Hawaiian EEZ (0.022 animals per 100 km2) (Barlow and Rankin 2007). Also, while NMFS does not have information on the level of bycatch by international vessels on the high seas, take rates by U.S. vessels on the high seas (0.78 animals per 1000 sets) are similar to take rates by U.S. vessels within the Hawaiian EEZ (0.71 per 1000 sets) (Forney and Kobayashi, 2007). No complete abundance estimate for false killer whales on the high seas is available, but an estimate made for part of the high seas range of these fisheries is 906 (C.V. = 0.68), which would result in a PBR of 5.2 false killer whales for all U.S. and international fisheries combined. The estimated mortality and serious injury of false killer whales by U.S. vessels operating on the high seas is 5.4 animals per year (Draft 2009 SAR), which already exceeds the PBR, without taking into account international takes.

Comment 18: The HLA stated that the proposed 2010 LOF nowhere mentions longline fishing in and around Palmyra Atoll, Johnston Atoll and other U.S. possessions in the Pacific Ocean. The HLA noted that the 2008 false killer whale SAR estimates a population size of 1,329 animals for the Palmyra Atoll stock, butt is not clear how the proposed 2010 LOF takes into account, in any manner, longline fishing in U.S. waters around these possessions. The HLA asked if the proposed LOF intended to include these animals in its ''pelagic'' false killer whale stock definition? Or, are fisheries in these areas considered part of the deep-set fishery or a separate longline fishery (which then should be separately categorized)? The HLA then asked, if the former, why is the fishery categorized based only upon a population estimate and PBR that does not include the Palmyra population estimate? The HLA asserted that NMFS should clarify these issues in the final 2010 LOF, 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: As stated in the response to a similar comment on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 12), 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''). The fishery description provided in the final 2008 LOF (72 FR 66048, November 27, 2007), states that Hawaii-based longline fishing effort takes place over a huge geographic range extending north-south from 40° N. lat. to the equator and east-west from

Kure Atoll to as far as 135° W. long., with fishing for tunas primarily occurring around the main Hawaiian Islands and south of the Hawaiian Islands.

In the final 2008 SARs, there were three recognized false killer whale stocks in the Pacific Islands region, including the Palmyra stock: (1) the Hawaii insular stock, and (2) the Hawaii pelagic stock, and (3) the Palmyra stock. The status of false killer whales in Palmyra Atoll EEZ waters relative to the Optimal Sustainable Population is unknown, and there are insufficient data to evaluate trends in abundance. The rate of mortality and serious injury to false killer whales within the Palmyra Atoll EEZ in the Hawaii-based longline fishery (0.3 animals per year) does not exceed the PBR (6.4) for this stock. The total fishery mortality and serious injury for Palmyra Atoll false killer whales is less than 10 percent of PBR. Additional injury and mortality of false killer whales is known to occur in U.S and international longline fishing operations in international waters, and the potential effect on the Palmyra stock is unknown.

The ''HI deep-set (tuna target) longline'' fishery is classified as a Category I fishery based on its interactions resulting in serious injury and mortality levels that exceed the PBR of the Hawaii pelagic stock of false killer whales. As noted in the response to comment 17, a fishery is categorized on the LOF based at its highest level of classification. Therefore, while the rate of mortality and serious injury to false killer whales within the Palmyra Atoll EEZ in the Hawaii-based longline fishery does not warrant a Category I classification, the fishery remains a Category I based on serious injury and mortality levels of the pelagic stock of false killer whales.

Commercial Fisheries in the Pacific Ocean

Comment 19: The MCA believed that NMFS' proposed 2010 classification of fisheries incorrectly designates the ''Bering Sea Aleutian Islands (''BSAI'') Pollock trawl'' and the ''BSAI flatfish trawl'' fisheries as Category II fisheries. The MCA noted that the ''BSAI flatfish trawl'' fishery is classified as Category II because of interactions with the western stock of Steller sea lions, and the ''BSAI Pollock trawl'' fishery is classified as Category II because of interactions with the western stock of Steller sea lions; eastern North Pacific, Gulf of Alaska, BSAI transient killer whales; central North Pacific humpback whales; and western North Pacific humpback whales. The MCA stated that, with respect to the two fisheries at issue, the data and analyses on which NMFS relied to calculate the PBR and mortality and serious injury rates are flawed. The MCA further stated that by utilizing this flawed data, NMFS has seemingly made an arbitrary and capricious decision not to use the best scientific data available.

The MCA provided reasoning, research results, and literature citations to support the assertion that the data used for stock delineations, PBR calculations, and mortality and serious injury calculations in the final 2008 SARs (for the marine mammal stocks listed in the previous paragraph) are flawed. The MCA stated that NMFS double counts mortalities and injuries because of the procedure NMFS uses to calculate marine mammal bycatch (including incorporating all observed and unobserved fishing sets into analyses and counting mortality and serious injury twice for certain stocks). The MCA commented that relying on the flawed SARs has caused NMFS to understate the PBR for marine mammal stocks. The MCA asserted that the errors in the PBR calculations in the SARs require that these errors be corrected and PBRs recalculated before NMFS proceeds with any final LOF designations.

Response: NMFS acknowledges this comment; however, this comment is not applicable to the LOF rulemaking process at hand. This comment is concerned with the calculation of PBRs and mortality and serious injury rates, which NMFS' reports in the annual SARs. NMFS then categorizes fisheries on the LOF based on the information presented in the SARs. NMFS does not complete any PBR or serious injury and mortality-related analysis in the LOF rulemaking process. Also, this comment references information in the final 2008 SARs, which is not relevant to the proposed 2009 SARs rulemaking public comment period that overlapped with the proposed 2010 LOF comment period and was therefore not directed to the SARs for consideration in the 2009 SARs rulemaking process. The commenter may resubmit these comments during the next SARs open public comment period.

Comment 20: The MCA stated that there is a serious disconnect between the proposed 2010 LOF and the SARs. In the proposed 2010 LOF, NMFS stated the ''BSAI Pollock trawl'' fishery is placed into Category II in part because of interactions with the central and western North Pacific stocks of humpback whales (74 FR at 27752, June 11, 2009). The MCA stated that the SAR assigns 100 percent of the fisheries related mortality for these two stocks of humpback whales to other fisheries. The MCA noted that the SAR never mentions the ''BSAI Pollock trawl'' fishery as causing humpback whale deaths or serious injury (final 2008 SAR at page 165, 173). The MCA asserted that since the LOF is based on the SAR, the ''BSAI Pollock trawl'' fishery cannot be placed in Category II based on humpback whale interactions that are not reported in the SAR.

Response: The classification of a fishery as a Category II fishery is based on the annual mortality and serious injury of a stock in a given fishery exceeding 1 percent and less than 50 percent of the PBR level (72 FR 66048, 27 November 2007). While there are known historical interactions between the BSAI pollock trawl fishery and the central and western North Pacific stocks of humpback whales, these interactions are not the basis for classifying the ''BSAI Pollock trawl'' fishery as a Category II fishery (i.e., the level of serious injury and mortality of these stocks in the ''BSAI Pollock trawl'' fishery is below 1 percent of the stocks' PBR levels). The continued inclusion of the superscript ''1'' following these stocks in this fishery on Table 1 was a typographical error, which NMFS has corrected in this final rule. The Tier 1 approach to classifying fisheries considers the cumulative fishery mortality and serious injury for a particular stock; however, Tier 2 classification of fisheries considers fishery-specific mortality and serious injury for a particular stock. A fishery is typically categorized on the LOF at its highest level of classification. In the ''BSAI Pollock trawl'' fishery, the estimated annual level of serious injury and mortality of the Eastern North Pacific, Gulf of Alaska, Aleutian Islands, and Bering Sea transient killer whale stock is 0.4, or 12.9 percent of PBR (PBR is 3.1), and the western Steller sea lion stock is 3.8, or 1.6 percent of PBR (PBR is 234). Therefore, this fishery is classified as a Category II fishery under the Tier 2 approach to fishery classification.

Comment 21: The MMC and the CBD recommended the ''Gulf of Alaska sablefish longline'' fishery be elevated above a Category III. The CBD based this recommendation on frequent interactions with sperm and killer whales, qualifying this fishery for Category I or II. The MMC noted the 2008 SARs indicate that observers reported that three sperm whales were seriously injured in this fishery in 2006. The MMC asserted that, given the estimated number of injuries or deaths based on 2002 to 2006 data, NMFS' inability to calculate a potential

biological removal level for the North Pacific sperm whale stock is not a sufficient basis for maintaining the current Category III classification for this fishery. The MMC further noted that NMFS is unable to estimate PBR levels for 57 percent of the marine mammal stocks that occur in Alaska because of inadequate or outdated data. The MMC asserted that NMFS cannot continue to use this lack of information as the basis for failing to classify fisheries that incidentally kill or seriously injure marine mammals. Doing so is inconsistent with NMFS' own guidance for addressing such situations, which directs placement in category II when the available information is not sufficient to categorize a fishery accurately (74 FR at 27740, June 11, 2009).

Response: NMFS received similar comments on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 22). The PBR level for the North Pacific sperm whale stock is unknown because a reliable abundance estimate is not available. NMFS is in the process of analyzing bycatch data from 2007 and 2008 and will re-evaluate the category placement for the ''Gulf of Alaska sablefish longline'' fishery on the 2011 LOF.

The commenter's interpretation of NMFS' guidance is not entirely correct. NMFS' guidance provided in the preamble of each proposed LOF, including the proposed 2010 LOF (74 FR at 27740, June 11, 2009), states, ''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).'' NMFS has such information on some of the ''other factors'' related to the ''Gulf of Alaska sablefish longline'' fishery, such as fishing techniques, gear used, and qualitative data and stranding data. As stated above, NMFS is in the process of evaluating available data and will re-evaluate the category placement of this fishery in the 2011 LOF.

Comment 22: The MMC and the CBD disagreed with NMFS' proposal to reclassify the ''Alaska southeast salmon purse seine'' fishery from Category II to Category III based on lack of data regarding humpback whale takes. The MMC noted that high levels of entanglement-related scarring have been documented for humpback whales in Alaska. The MMC further noted that the lack of evidence for interactions does not provide a reliable basis for reclassifying this fishery to category III if NMFS has failed to institute an observer program for it. The MMC stated that given that the fishery has no observer coverage and analogous fisheries are known to seriously injure humpback whales, NMFS should maintain the fishery's Category II classification.

Response: In this case a 15–year lack of evidence of serious injury and mortality in this fishery, even in the absence of an observer program, is enough to warrant its re-categorization. Under the annual LOF, fishery categories are assigned via NMFS' well-documented process of analyzing known or estimated levels of serious injury and mortalities relative to a stock's PBR. In some cases, a fishery with no recent documented injuries or mortalities of marine mammals may be classified in Category II by analogy to similar gear types in similar areas that are known to cause mortality or serious injury of marine mammals. However, in those instances, additional available information (such as stranding data, fishermen self-reports, or anecdotal information) suggests serious injury or mortality of marine mammals may be occurring that is likely to exceed the Category III threshold. Only marine mammal serious injuries and mortalities that can be assigned to a specific fishery are included in fisheries' categorization. The re-categorization of the ''Southeast Alaska purse seine'' fishery in the 2010 LOF is consistent with this practice, albeit somewhat delayed. NMFS delayed the re-categorization of this fishery until this year as a precautionary measure, and is satisfied at this time that this fishery meets the criteria for Category III.

While humpback whale scarring is documented in Alaska, at this time there is no accepted method to establish a reliable rate of fishing-related serious injury or mortality from documented scarring. Scarring alone is not valid evidence for classifying a fishery as Category II. Further, in the few cases of known serious injury or mortality of humpback whales in purse seines in Alaska, unique scarring patterns from purse seine gear have been shown to be easily identifiable. NMFS recognizes that the lack of observer coverage due to funding constraints is not ideal; however, the lack of observer coverage along is not reason for classifying a fishery as Category II.

Comment 23: The CBD asserted that all other Alaska pot fisheries should be classified as Category II rather than Category III.

Response: Categorization of individual Alaska fisheries in Category II due to interactions with humpback whales are based on documented serious injury and mortality levels of humpback whales in each of those fisheries, including the ''AK Bering Sea sablefish pot'' fishery. Other Alaska pot, ring net, or trap fisheries either have no documented humpback whale serious injuries or mortalities or have low levels that do not meet the Category II requirements.

Comment 24: The HLA supported the re-labeling of the false killer whale stock with which the deep-set fishery interacts as the ''HI pelagic'' stock (as opposed to the ''HI'' stock), but only insofar as this change purports to distinguish the false killer whale ''pelagic'' stock from the false killer whale ''insular'' stock. As HLA has repeatedly commented (including comments submitted on the draft 2008 SARs), the HLA believes there are significant uncertainties and errors perpetuated in NMFS' false killer whale SAR year after year, which is then used to generate inaccurate LOFs. Specifically, the HLA disagreed with the continued division of false killer whales into three fictional stocks based on U.S. EEZ boundaries and NMFS' underestimate for the population abundance of false killer whales with which the deep-set fishery interacts. Thus, while HLA agreed with the proposed LOF's recognition of separate ''pelagic'' and ''insular'' false killer whale stocks, it did not agree with the cramped manner in which NMFS has defined the ''pelagic'' stock. The HLA asserted that NMFS must address these concerns or, at a minimum, acknowledge the significant uncertainties that underlie the determinations made in the proposed LOF.

Response: NMFS acknowledges this comment and the reference to the false killer whale stock with which the deep-set fishery interacts has been changed to the ''HI pelagic'' stock on the final 2010 LOF. The comment is also concerned that there are uncertainties with the designation of the Hawaii pelagic stock of false killer whales. This comment is not relevant to the LOF rulemaking at hand. NMFS reports stock delineations and discussions surrounding the uncertainties in the data used to base stock delineations, after opportunity for public review and comment, in the

annual SARs. NMFS determines which species and stocks are included as incidentally killed or injured in a fishery on the LOF in part by annually reviewing the information presented in the current SARs, which 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 interaction with commercial fishing operations. NMFS also reviews other sources of new information, including observer data, stranding data, and fisher self-reports. The LOF is not intended to repeat the information included in the SARs, but rather to incorporate the SARs with other sources of information in order to make determinations based on the best available science. However, this comment is relevant to the SARs rulemaking process and NMFS is aware of the concerns raised by the HLA and the MMC in recent years. Therefore, NMFS will address this comment as part of the comments received during the comment period for the proposed 2009 SARs (June 26, 2009–September 24, 2009; overlapping with the comment period for the proposed 2010 LOF).

Comment 25: The HLA supported NMFS's proposal to remove spinner dolphin (HI stock) and pantropical spotted dolphin (stock unknown) from the list of species and stocks that interact with the deep-set fishery and shallow-set fishery, respectively.

Response: NMFS acknowledges this comment. These stocks are removed from the list of species and stocks incidentally killed or injured in this final rule.

Comment 26: The CBD reiterated a previous comment from the 2009 LOF that various Hawaiian fisheries are known or suspected of interacting with Hawaiian monk seals. The CBD asserted that, given the critically endangered status of the monk seal, any interaction is significant and these fisheries should be reclassified as Category I or II.

Response: NMFS received a similar comment on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 13). The LOF lists the Hawaiian monk seal on the list of species and stocks incidentally killed or injured in the Category III ''HI lobster trap'' and ''HI Main Hawaiian Islands (MHI), Northwestern Hawaiian Islands (NWHI) deep sea bottomfish'' fisheries. The available information on Hawaiian monk seal interactions with these fisheries is:

(1) ''HI lobster trap'' fishery: There have not been any reported interactions since the mid–1980s; and

(2) ''HI Main Hawaiian Islands, Northwestern Hawaiian Islands deep sea bottomfish'' fishery: The final 2008 SAR states that in the past, monk seal interactions with fisheries in the NWHI were documented, but direct interactions have since become rare or non-existent, and issues related to competition have also somewhat abated. A Federal observer program of the NWHI bottomfish handline fishery was conducted from the fourth quarter of 2003 through 2006, and no monk seal interactions were observed. This fishery has not been observed since 2006. The NWHI lobster fishery closed in 2000, and on June 15, 2006, former President Bush signed a proclamation that created the Northwestern Hawaiian Islands Marine National Monument. Subsequent regulations prohibit commercial fishing in the Monument except for the bottomfish fishery (and associated pelagic species catch), which may continue until 2011. The MHI bottomfish handline fishery may also interact with monk seals as evidenced by recent fatty acid research; however, no mortalities or serious injuries have been attributed to this fishery.

While serious injuries and mortalities have not been documented in recent years, NMFS has retained Hawaiian monk seals as a species or stock incidentally killed or 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 and the true interaction rate cannot be estimated without purpose-designed observation effort. Also, the PBR level for monk seals is currently ''undetermined.'' Due to the fact that the PBR level for monk seals is undetermined and that 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.

Comment 27: The CBD noted that available information indicates that the ''American Samoa longline'' fishery should be listed as Category I based on its interactions with false killer whales.

Response: As stated in the preamble for each LOF, a fishery is classified as Category I if the annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of a stock's PBR level. A fishery is classified as Category II if the 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. NMFS stated in the proposed LOF for 2010 (73 FR 27739, June 11, 2009) that the abundance estimate and the PBR for the false killer whales interacting with the American Samoa longline fishery are unknown. NMFS biologists at the Southwest Fisheries Science Center will analyze the information on false killer whale abundance and interactions with the ''American Samoa longline'' fishery during the development of the 2010 SAR. NMFS will revisit whether reclassification of this fishery is warranted based on the updated SAR analyses at that time.

At this time a fishery classification of Category I cannot be scientifically substantiated. The fishing gear and methods used in the American Samoa longline fishery are similar to those of other Category I and II longline fisheries elsewhere in tropical/sub-tropical latitudes of the Pacific that are taking false killer whales. Therefore, classification of this fishery as Category II by analogy is warranted. NMFS recognizes the uncertainties with the false killer whale stock structure in American Samoa and will continue to assess false killer whale abundance and take estimates as resources become available. Please also see the discussion of a similar comment on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 14).

Comment 28: The MMC concurred with NMFS' proposal to reclassify the ''American Samoa longline'' fishery from Category III to Category II. The MMC further recommended that NMFS not postpone the injury determinations for the animals released alive from interactions with longline gear in 2008.

Response: NMFS acknowledges the concurrence and ''American Samoa longline'' fishery is reclassified from Category III to Category II in this final rule. NMFS understands the concerns about the fishery impacts to false killer whales in American Samoa, especially since there is a the lack of population abundace or stock status information from this area. In response to this concern NMFS began observing this fishery. In 2008, the observer coverage was 6.4 percent. NMFS will continue to assess false killer whale abundance and take estimates as resources become available. NMFS is not postponing determinations of the three marine mammal interactions reported in this fishery in 2008. NMFS is analyzing the 2008 observer data and making the necessary injury determinations during the development of the 2010 SARs. This timeline is in line with NMFS' process for reviewing and updating each annual NMFS SAR. 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.

Comment 29: The CBD stated that the ''Hawaii shallow-set longline'' fishery should be listed as a Category I fishery, since observer data from 2008 show takes of false killer whales and humpback whales in this fishery.

Response: For the 2010 LOF, a reclassification of the Hawaii shallow-set longline fishery to a Category I is not warranted. As noted in NMFS' response to comments on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 15), 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 2010 LOF is based on information in the final 2008 SARs, which includes analysis of the observer takes against calculated PBR levels through 2006. As noted in the response to comment 28 above, 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. 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 30: The MMC concurred with NMFS' proposal to classify the ''Hawaii shortline'' fishery as Category II.

Response: NMFS acknowledges this comment and has added the ''Hawaii shortline'' fishery as a Category II fishery in this final rule.

Comment 31: The CA Wetfish Producers Association (CWPA) agreed with NMFS' proposal to remove short-finned pilot whales (CA/OR/WA) from the list of species and stocks killed or injured in the Category II ''CA squid purse seine'' fishery.

Response: NMFS acknowledges this comment and has removed short-finned pilot whales (CA/OR/WA) from the list of species and stocks killed or injured in the Category II ''CA squid purse seine'' fishery.

Comment 32: The CWPA requested NMFS utilize the most recent scientific information in terms of observer data from 2004–2008 to update the list of species and stocks killed or injured in the ''CA squid purse seine'' fishery and reclassify the fishery to a Category III. The CWPA noted that observer data from the California Coastal Pelagic Purse Seine Observer Program contains a single observed mortality of an ''unidentified common dolphin'' in this fishery on January 3, 2005, and past LOFs have represented this interaction as ''common dolphin, unknown.'' The CWPA stated that, while the two cetacean species do exhibit some overlapping distribution, there are substantially more recent data and robust observer data available to NMFS than just 2006: there were more than 193 interaction-free trips observed by Federal observers during 2004 to 2006, 80 more clean sets observed in mid to late 2007, and 13 interaction-free observed seine sets (4 trips) in 2008.

Response: NMFS received similar comments on the 2008 and 2009 LOFs. As noted in the final 2008 LOF (72 FR 66048, November 27, 2007; comment/response 19) and final 2009 LOF (73 FR 73032, December 1, 2008; comment/response 32), NMFS based this listing on observer information from this fishery collected from 2004 through 2007. When able, NMFS bases serious injury and mortality estimates on the most recent 5 years for which data have been analyzed (NMFS 2005, Guidelines for Assessing Marine Mammal Stocks [GAMMS] II). If the total fishing effort has changed substantially over the last 5 years, NMFS may use only the most recent relevant data to most accurately reflect the current level of annual mortality. In some cases where information is lacking, such as in cases where there is no observer coverage, information that is more than 5 years old may not be ignored if it is the most appropriate information available in a particular case (NMFS 2005, GAMMS II report).

In each year from 2004–2007, observer coverage in the ''CA squid purse seine'' was low, under 2 percent. There was one mortality of a short-beaked common dolphin in 2005 and in 2006 one unidentified common dolphin was observed seriously injured. There are no available biological samples or photographs of the injured dolphin; therefore, there is insufficient information to identify the species. 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 and NMFS cannot eliminate the possibility that a long-beaked common dolphin was seriously injured during this event. Extrapolating these sightings to the entire fishery and averaging over the four years of available information, the estimated annual serious injury or mortality is 22 long-beaked common dolphins (draft 2009 SAR). The current PBR for long-beaked common dolphins is 95/year (final 2008 SAR). Therefore the serious injury or mortality rate is 23 percent, meeting the Category II criteria (less than 50 percent and greater than 1 percent of the stock's PBR).

Comment 33: The California Department of Fish and Game (CDFG) disagreed with NMFS' proposal to elevate the ''California spiny lobster trap'' fishery from Category III to Category II. The CDFG stated that the report of the 2007 humpback whale entanglement event, submitted by CDFG to NMFS Southwest Region's stranding coordinator, was submitted with the emphasis that the report was a third hand report. The CDFG stated that this report was based on information provided to the CDFG biologist from friends who heard it from a recreational fisherman. CDFG assumed that neither the whale species nor the gear type was verified. Also, since the 2007 entanglement event occurred in the first week of July, CDFG had doubts as to whether the trap involved in the entanglement was a lobster trap.

Response: NMFS published criteria for evaluating reports from the LWDN in the proposed 2009 LOF (73 FR 33760, June 13, 2008). Each year, the LWDN receives reports of whales entangled in fishing gear. For some fisheries, particularly pot and trap fisheries, this is currently the only information NMFS has on which to assess the level of large whale entanglement in fisheries on the west coast. NMFS used the criteria to elevate four pot and trap fisheries to Category II in the 2009 LOF based upon interactions with humpback whales. NMFS acknowledged and identified the assumptions that need to be made in using the criteria in the proposed 2009 LOF.

When evaluating an entanglement event, NMFS' first criterion is whether a specific fishery has been positively identified as causing the entanglement (73 FR 33760, June 13, 2008). Different types of pot and trap gear have distinguishing characteristics (e.g., marking requirements on buoys) that make it possible to identify the gear to a particular fishery. NMFS second criterion is whether the fishery operates in the area and time when a humpback whale was reported entangled in pot and trap gear (73 FR 33760, June 13, 2008). Most pot and trap fisheries have discrete seasons, thus gear can be associated with certain fisheries in certain areas based on the time of year.

NMFS proposed to elevate the spiny lobster fishery to Category II on the 2010 LOF based on available information that indicated a humpback whale was observed entangled in spiny lobster gear on July 10, 2007, south of Newport Harbor, CA. The available information came from a staff member from CDFG and was thus considered reliable. Unfortunately, there are no photographs available to aid in identification of the fishing gear that entangled the whale and no other information available. In CDFG's comment they state that they do not consider the report to be reliable. The information on the humpback whale and gear came not from a CDFG staff member, so CDFG does not have confidence in the accuracy of the information. NMFS spoke with staff from CDFG to discuss the sighting and the spiny lobster fishery. Based upon those discussions and memos from CDFG, NMFS agrees that the sighting of a humpback entangled in spiny lobster gear can not be considered reliable and does not meet our first criterion for re-categorizing fisheries based upon LWDN reports.

NMFS then considered the report using the second criterion to propose the fishery's elevation to Category II: does the fishery operate at a time and area consistent with the observed entanglement (73 FR at 33772, June 13, 2008). The season for the spiny lobster trap fishery is October through March and occurs in the southern California Bight, so the reported entanglement was observed almost 4 months after the fishery closed, within the geographic region in which the spiny lobster trap fishery occurs. The information provided by CDFG and a review of the fishery indicates that neither of the two criteria for re-categorizing the spiny lobster fishery have been met. Based on this information, NMFS is not elevating this fishery to Category II in the final 2010 LOF. This fishery will remain a separate Category III fishery. NMFS will continue to evaluate reports of pot and trap interactions with large whales on the west coast and may consider elevating this fishery in the future if additional information or analysis supports such a change.

Comment 34: The CBD agreed with NMFS' proposal to reclassify the ''CA spiny lobster trap'' fishery as a Category II. The CBD further asserted that 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: Since the publication of the proposed 2010 LOF, NMFS has received information to suggest that re-categorizing the spiny lobster fishery to Category II at this time is not supported by the available data. Please see response to comment number 33 above. Regarding the recommendation that all pot or trap fisheries be placed in Category II until observers can show that the fisheries do not pose a threat to humpback whales, NMFS received and responded to a similar comment from the CBD on the final 2009 LOF (73 FR 73032, December 1, 2008; comment/response 29). It may not be appropriate to place observers onboard fishing vessels in pot and trap fisheries to detect interactions with marine mammals. Observers in pot and trap fisheries have very limited ability to detect interactions with the gear. In most instances, an entangled large whale is likely to swim away with gear and not be observed on the fishing grounds. Therefore alternative monitoring methods are needed. NMFS continues to work with other government agencies, the scientific and fishing communities, and the public to collect information on entanglements events and methods for tracking interactions between marine mammals and pot and trap gear. NMFS is continuing to address the problem of large whale entanglements and is committing resources to the issue, including hiring additional staff to help advance NMFS' Southwest Region's efforts on this issue. As noted in previous LOFs, when and if additional information and/or analysis become available, NMFS would consider reclassifying of pot and trap fisheries, as appropriate.

Comment 35: The MMC reiterated its previous recommendation that NMFS classify all West Coast pot/trap fisheries (i.e., those off Washington, Oregon, and California) as Category II. The MMC asserted that dividing and renaming the West Coast pot/trap fisheries based on observed entanglement events is not appropriate, given the small fraction of entanglements likely to be observed and the fact that the gear cannot be distinguished. The MMC also stated that the existing evidence on large whale entanglement events is not sufficient to make an informed assessment regarding the entanglement rates for pot/trap fisheries on the West Coast.

Response: Please see the responses to comments 33 and 34 above. NMFS received a similar comment from the MMC on the 2009 LOF. As noted in NMFS' response to comments on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 30), NMFS must use the best available information in making recommendations for the LOF. NMFS reviewed all of the available data on entangled large whales off the U.S. West Coast, the distribution of species entangled, and the spatial and temporal characteristics of pot and trap fisheries to develop criteria for categorizing fisheries. NMFS is continuing to work on methods for improved data collection and analysis and will consider re-categorizing additional pot and trap fisheries when and if more information and/or analysis become available, as appropriate. As noted in the response to comment 34, NMFS is continuing to dedicate resources to address the issue of large whale entanglements in fishing gear, including hiring additional staff to help NMFS' Southwest Region's ongoing efforts.

Comment 36: The MMC concurred with NMFS' proposal to reclassify the ''CA pelagic longline'' fishery from Category II to Category III.

Response: NMFS acknowledges this comment and has reclassified the ''CA pelagic longline'' fishery from Category II to Category III in this final rule.

Comment 37: The CBD urged NMFS to maintain 100 percent observer coverage in the ''CA pelagic longline'' fishery, as recent proposals to expand that fishery if brought to fruition are likely to result in significant increases in interactions with marine mammals.

Response: The ''CA pelagic longline'' fishery is re-categorized as a Category III fishery in the 2010 LOF due to the low observed bycatch of marine mammals. The current fishery has 100 percent observer coverage. If a proposed shallow-set longline fishery exempted fishing permit is approved, one of the conditions of issuing the permit would be 100 percent observer coverage. There are currently no other proposals to expand the existing ''CA pelagic longline'' fishery.

Comment 38: The MMC responded to NMFS' request for public comment and information on two large whale entanglements in gillnet gear in 2007. The MMC asserted that observer coverage is insufficient to provide reliable data on marine mammal take rates in both of the Category II California set gillnet fishery (3.5–in mesh) for halibut, white seabass, and other species or the California drift gillnet fisheries (mesh size ≥3.5 in and <14 in) for yellowtail, barracuda, and white seabass. The MMC further asserted that the size of these fisheries and the number of species they take warrant increased observer coverage. For that purpose, the MMC recommended that NMFS develop and implement expanded monitoring programs for the ''CA halibut, white seabass, and other

species set gillnet fishery (3.5–in mesh)'' and the ''CA yellowtail, barracuda, and white seabass drift gillnet fisheries (mesh size ≥3.5 in and <14 in)'' fisheries.

Response: NMFS is working to expand observer coverage of the California state gillnet fisheries. NMFS plans to place observers on the California set gillnet fishery (3.5–in mesh) for halibut, white seabass, and other species beginning January 2010. Available observer funds should yield coverage of up to 25 percent. NMFS plans to place observers on the California drift gillnet fisheries (mesh size ≥3.5 in and <14 in) for yellowtail, barracuda, and white seabass beginning in summer 2010 if observer funds are available.

NMFS did not receive additional information from the public on the two large whale entanglements in 2007 that NMFS believes may have been caused by either the California set gillnet fishery (3.5–in mesh) for halibut, white seabass, and other species or the California drift gillnet fishery (mesh size ≥3.5 in and <14 in). NMFS will continue to evaluate new and existing entanglement information to better understand the nature of large whale interactions with fishing gear along the U.S. West Coast. When and if new information or analysis is available, NMFS will assign these entanglements to the appropriate fisheries. At this time, these reports will continue to be listed as entangled in unknown gillnet gear.

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

Comment 39: The MMC recommended NMFS review the available information on state and Federal permit holders in Northeast and Mid-Atlantic fisheries and revise the published LOF to accurately reflect the number of active vessels and participants in each fishery. The MMC noted that NMFS revised its estimates of the number of participants for Northeast and Mid-Atlantic fisheries in the proposed 2010 LOF based on state and Federal permit information without removing any duplication (i.e., individuals holding both state and Federal permits for a particular fishery) or accounting for inactive permits. Thus, although the information previously included in the LOF may have underestimated the number of participants, the new information likely overestimates the level of participation in some fisheries.

Response: NMFS concurs that the updated number of estimated participants for each fishery may complicate management efforts due to uncertainty around the number of active versus passive participants and duplicative permit information. Therefore, NMFS will not make the changes proposed in the proposed 2010 LOF (74 FR 27739, June 11, 2009) and will revert back to the estimates of Federal permits from the 2009 LOF (73 FR 73032. December 1, 2008) in this final 2010 LOF for the ''Mid-Atlantic gillnet,'' Northeast sink gillnet,'' ''Atlantic mixed species trap/pot,'' ''Mid-Atlantic menhaden purse seine,'' ''Mid-Atlantic haul/beach seine,'' ''Mid-Atlantic mid-water trawl,'' ''Northeast bottom trawl,'' ''Northeast mid-water trawl,'' and ''Gulf of Maine Atlantic herring purse seine'' fisheries. NMFS will work with the relevant state agencies to obtain more reliable information on state permits for these fisheries to be incorporated in future LOFs. Based on updated information received from the Virginia Marine Resource Commission on the 2008 license year, the estimated number of Virginia Pound Net fishery participants will be updated to ''41.'' In summary, the estimated numbers of fishery participants in this final rule, for the previously mentioned fisheries, are: Category I ''Mid-Atlantic gillnet'' fishery to ≤370; Category I ''Northeast sink gillnet'' fishery to 341; Category II ''Atlantic mixed species trap/pot'' fishery to unknown; Category II ''Mid-Atlantic menhaden purse seine'' fishery to 22; Category II ''Mid-Atlantic haul/beach seine'' fishery to 25; Category II ''Mid Atlantic mid water trawl'' fishery to 620; Category II ''Northeast bottom trawl'' fishery to 1052; Category II ''Northeast mid-water trawl'' fishery to 17; Category II ''VA pound net'' fishery to 41; and Category III ''Gulf of Maine Atlantic herring purse seine'' fishery to 30.

Comment 40: The MMC concurred with NMFS' proposal to add the Gulf of Maine/Bay of Fundy harbor porpoise stock to the list of species and stocks incidentally killed or injured in the Category II ''Northeast bottom trawl'' fishery. The MMC further noted that the combined mortality of harbor porpoises from this stock in the Category I ''Northeast sink gillnet,'' Category I ''Mid-Atlantic gillnet,'' and Category II ''Northeast bottom trawl'' fisheries exceeds the stock's PBR level. For that reason, the MMC commented that NMFS should recognize the harbor porpoise as a stock incidentally injured or killed in the ''Northeast bottom trawl'' fishery and work jointly with the Harbor Porpoise Take Reduction Team and the Atlantic Trawl Gear Take Reduction Team to reduce the stock's total incidental serious injury and mortality levels.

Response: NMFS acknowledges the comment and will continue to monitor all marine mammal takes within the ''Northeast bottom trawl'' fishery. NMFS recognizes the harbor porpoise as a stock incidentally injured or killed in the ''Northeast bottom trawl'' fishery, as depicted by its current listing in Table 2 of the 2010 LOF. NMFS recently proposed modifications to the Harbor Porpoise Take Reduction Plan (74 FR 36058, July 21, 2009) to further reduce the serious injury and mortality of harbor porpoises from incidental interactions with Northeast sink and Mid-Atlantic gillnet fisheries to below the stock's PBR level. NMFS will continue to coordinate with the Harbor Porpoise Take Reduction Team and the Atlantic Trawl Gear Take Reduction Team to ensure that the stock's total incidental serious injury and mortality is reduced to below its PBR level and, ultimately, to an insignificant level approaching a zero mortality and serious injury rate.

Comment 41: The MMC recommended that NMFS not remove the superscript ''1'' after Gulf of Maine/Bay of Fundy harbor porpoise in its listing of the Category I ''Mid-Atlantic gillnet'' fishery until NMFS has more definitive information indicating that the number of removals is, and is likely to remain, below 50 percent of the stock's PBR level. The MMC asserted that it would be premature to conclude that the taking of harbor porpoises is no longer driving the classification of the ''Mid-Atlantic gillnet'' fishery. The MMC noted that the estimated take is only a single percentage point (or 11 animals) below the threshold that would trigger a Category I classification. The MMC asserted that, given the level of observer coverage in the fishery (2.2 percent) and the resulting uncertainty around the estimates of incidental serious injury and mortality, this difference is not significant or justification for removal of the superscript notation. The MMC further noted that NMFS' proposal fails to recognize the increasing trend in the deaths of harbor porpoises in this fishery in recent years.

Response: The superscript ''1'' in Table 3 of the LOF is defined to depict ''Fishery classified based on serious injuries 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.'' According to the 2008 SAR, the average annual harbor porpoise (Gulf of Maine/Bay of Fundy stock) mortality and serious injury in the ''Mid-Atlantic

gillnet'' fishery from 2002 to 2006 was 299, which represented the 4–year average estimate from 2003, 2004, 2005, and 2006. Using this average, the fishery was responsible for taking 49 percent of the stock's PBR, which is not greater than 50 percent. As the commenter stated, regulations (50 CFR 229.2) define a Category I fishery as ''one that is by itself responsible for the annual removal of 50 percent or more of any stock's potential biological removal level'' and a Category II fishery as ''is by itself responsible for the annual removal of between 1 and 50 percent, exclusive, of any stock's potential biological removal level.'' Therefore, given the specific regulatory reference to 50 percent for the cut off for Category I, while harbor porpoises are being taken in this fishery, this stock currently does not qualify as driving the Category I definition for the ''Mid-Atlantic gillnet'' fishery. Harbor porpoise serious injuries and mortalities were responsible for the elevation of the ''Mid-Atlantic gillnet'' fishery from Category III to Category II on the 1996 LOF (December 28, 1995; 60 FR 67063) but serious injuries and mortalities of coastal bottlenose dolphins were responsible for the elevation of the fishery to Category I on the 2003 LOF (July 15, 2003; 68 FR 41725). Currently, coastal bottlenose dolphin serious injuries and mortalities still drive the Category I definition for this fishery. The placement of the superscript for Category I and Category II fisheries is evaluated on a yearly basis and if in the future harbor porpoise serious injuries and mortalities in this fishery increase to 50 percent of PBR or greater, the superscript will be added to Table 2.

Comment 42: The GSSA requested that NMFS consider that the proposal to update the estimated number of vessels or participants in the 2010 proposed LOF to 7,596 for the ''Mid-Atlantic gillnet'' fishery is counting the number of North Carolina state permits that are issued to thousands of people who use gillnets for personal consumption in North Carolina bays and sounds.

Response: NMFS will work with state agencies to obtain more specific state permit information. See response to number 39 for additional discussion on this topic.

Comment 43: The CBD reiterated previous years' comments stating concerns regarding NMFS' failure to adequately classify certain Gulf of Mexico fisheries as Category I or Category II in light of known or estimated mortality and serious injury to marine mammals from those fisheries. Specifically, they suggested the ''Gulf of Mexico menhaden purse seine fishery'' and the ''Gulf of Mexico gillnet fishery'' be elevated from Category II to Category I, based on known or likely impacts to bottlenose dolphin stocks. The CBD expressed pleasure that NMFS proposed to reclassify the Gulf of Mexico blue crab trap/pot fishery. Finally, the CBD stated that NMFS should make it a high priority to place observer coverage on the ''Gulf of Mexico menhaden purse seine'' fishery and convene a take reduction team to address bottlenose dolphin takes in the Gulf from this and other fisheries.

Response: The commenter incorrectly states that NMFS has proposed to elevate the blue crab trap/pot fishery. This fishery remains a Category III on the final 2010 LOF. NMFS does not believe elevation of the Gulf of Mexico blue crab trap/pot, menhaden purse seine, or gillnet fisheries is supported by currently available information. There is no observer program for these fisheries, and NMFS relies on stranding data and fishermen's self-reports to document fishery interactions with marine mammals. NMFS acknowledges that, while these sources show only a low level of interactions, these sources are unreliable and likely to be biased low. In addition, PBR is unknown for these stocks because of insufficient information on stock structure and abundance. NMFS will continue monitoring fishermen's self-reports and stranding data. Observer coverage for these fisheries also remains a priority if resources become available.

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 animal which was released alive. In the same time 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. Fishermen's self-reports through the MMAP reveal 11 dolphin mortalities in the menhaden purse seine fishery from 2000–2008: two in 2005, one in 2004, two in 2002, one in 2001 and five in 2000. Nine of these mortalities were confirmed to be bottlenose dolphins. However, 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; however, four dolphin mortalities occurred in gillnet research gear between 2003–2007. Stranding data also suggests that marine mammal interactions with gillnets do occur, causing mortality and serious injury. NMFS acknowledges that stranding data likely underestimates 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. To address this, NMFS conducted multiple stranding and human interaction workshops in Texas, Louisiana, Mississippi and Alabama in 2008, and provided additional human interaction training to the Southeast Stranding Network at their Biennial Conference in 2009. In addition, in 2009 NMFS awarded nearly $292,000 in Prescott Grants to increase stranding network capabilities throughout the Gulf of Mexico. Prescott Grant 2010 Southeast Regional priorities include research into ways to enhance stranding response coverage, capability, Level A data collection, and number of necropsies in areas where there is little or no coverage, including along the Northern Gulf of Mexico.

Because population size and PBR are undetermined for the three coastal stocks and most of the bay, sound, and estuary stocks of bottlenose dolphins, NMFS is unable to assess the population level impacts of serious injury and mortality from fisheries to determine whether annual mortality is greater than or equal to 50 percent of PBR. Thus, the currently available information dues not support convening a TRT.

Comment 44: The MMC reiterated its previous recommendations on the 2003 through 2009 LOFs that NMFS expedite its investigation of bottlenose dolphin stock structure in the Gulf of Mexico, expand its efforts to collect reliable information on serious injury and mortality rates of marine mammals incidental to Gulf of Mexico fisheries, and reevaluate the classification of Gulf of Mexico fisheries as information becomes available.

Response: NMFS agrees that it is important to further investigate stock structure and abundance of bottlenose

dolphins in the Gulf of Mexico. PBR is undetermined for most Gulf of Mexico stocks because the population size estimates are more than 8 years old and resources are unavailable to conduct additional surveys. Collecting reliable information on serious injury and mortality of marine mammals in the Gulf of Mexico is also essential. However, there are currently no resources to fund observer programs in the Gulf of Mexico fisheries. Therefore, NMFS is focusing on building volunteer stranding network capacity in the Gulf and increasing the level and quality of stranding response and has taken concrete steps to improve stranding capacity, as discussed in the response to Comment 43 above. NMFS expects these efforts will increase the effectiveness of the stranding networks and better inform management decisions in the future.

Summary of Changes to the LOF for 2010

The following summarizes changes to the LOF for 2010 in fishery classification, fisheries listed in the LOF, the number of participants in a particular fishery, and the species and stocks that are incidentally killed or injured in a particular fishery. The classifications and definitions of U.S. commercial fisheries for 2010 are identical to those provided in the LOF for 2009 with the changes outlined below.

Commercial Fisheries in the Pacific Ocean

Fishery Classification

The ''American Samoa longline'' fishery is elevated from Category III to Category II.

The ''AK southeast salmon purse seine'' fishery is reclassified from Category II to Category III.

The ''CA pelagic longline'' fishery is reclassified from Category II to Category III.

Addition of Fisheries to the LOF

The ''CA spiny lobster trap'' fishery is added as a separate Category III fishery (split from the ''CA spiny lobster, coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery, renamed the ''CA coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery in this final rule).

The ''HI shortline'' fishery is added as a Category II fishery.

Fishery Name and Organizational Changes and Clarifications

The Category III ''CA spiny lobster, coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery is renamed to the ''CA coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery.

List of Species and Stocks That are Incidentally Killed or Injured

The stock name for false killer whales incidentally killed or injured in the ''HI deep-set (tuna-target) longline/set line'' fishery is changed from ''HI'' to ''HI pelagic.''

Pantropical spotted dolphin (stock unknown) is added to the list of species and stocks incidentally killed or injured in the Category I ''HI deep-set (tuna target) longline/set line'' fishery.

Spinner dolphin (HI) is removed from the list of species and stocks incidentally killed or injured in the Category I ''HI deep-set (tuna target) longline/set line'' fishery.

Pantropical spotted dolphin (stock unknown) is removed from the list of species and stocks incidentally killed or injured in the Category II ''HI shallow-set (swordfish target) longline/set line'' fishery.

False killer whale (stock unknown) is added to the list of species and stocks incidentally killed or injured in the ''American Samoa longline'' fishery (elevated to Category II in this final rule).

Humpback whale (Central North Pacific) is removed from the list of species and stocks incidentally killed or injured in the Category III ''AK southeast salmon purse seine'' fishery.

The superscript ''1'' is removed after humpback whale (Central North Pacific) and humpback whale (Western North Pacific) in the list of species and stocks incidentally killed or injured in the Category II ''AK Bering Sea Aleutian Islands Pollock trawl'' fishery to correct a typographical error.

The stock name for Northern fur seals is changed on the list of species and stocks incidentally killed or injured in the Category II ''AK Bering Sea, Aleutian Islands flatfish trawl'' fishery from ''Eastern North Pacific'' to ''Eastern Pacific.''

Short-finned pilot whale (CA/OR/WA) is removed from the list of species and stocks incidentally killed or injured in the Category II ''CA squid purse seine'' fishery.

A superscript ''1'' is added after long-beaked common dolphin (CA) in the list of species and stocks incidentally killed or injured in the Category II ''CA squid purse seine'' fishery.

Gray whale (Eastern North Pacific) is added to the list of species and stocks incidentally killed or injured in the Category III ''CA spiny lobster'' fishery.

CA sea lion (U.S.) is removed from the list of species and stocks incidentally killed or injured in the ''CA pelagic longline'' fishery.

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

Fishery Name and Organizational Changes and Clarifications

The description of the Category I ''Mid-Atlantic gillnet'' fishery is replaced with the following: ''The Category I Mid-Atlantic gillnet fishery targets monkfish, spiny dogfish, smooth dogfish, bluefish, weakfish, menhaden, spot, croaker, striped bass, large and small coastal sharks, Spanish mackerel, king mackerel, American shad, black drum, skate spp., yellow perch, white perch, herring, scup, kingfish, spotted seatrout, and butterfish. The fishery uses drift and sink gillnets, including nets set in a sink, stab, set, strike, or drift fashion, with some unanchored drift or sink nets used to target specific species. The dominant material is monofilament twine with stretched mesh sizes from 2.5 12 in (6.4 30.5 cm), and string lengths from 150 8,400 ft. (46 2,560 m). This fishery operates year-round west of a line drawn at 72° 30′ W. long. south to 36° 33.03′ N. lat. (VA/NC border) and east to the eastern edge of the EEZ and north of the NC/SC border, not including waters where Category II and Category III inshore gillnet fisheries operate in bays, estuaries, and rivers. This fishery includes any residual large pelagic driftnet effort in the mid-Atlantic, any shark and dogfish gillnet effort in the mid-Atlantic, and those North Carolina small and large mesh beach-anchored gillnets formerly placed in the Category II Mid-Atlantic haul/beach seine fishery in the mid-Atlantic zone described. This NC component fishing effort is prosecuted right off the beach (6 ft [1.8 m]) or in nearshore coastal waters to offshore waters (250 ft [76 m]). Gear in this fishery is managed by several Federal and interstate FMPs managed by the Atlantic States Marine Fisheries Commission (ASMFC), the Atlantic Large Whale Take Reduction Plan (ALWTRP), the Harbor Porpoise Take Reduction Plan (HPTRP), and the Bottlenose Dolphin Take Reduction Plan (BDTRP). Fisheries are primarily managed by total allowable catch limits; individual trip limits (quotas); effort caps (limited number of days at sea per vessel); time and area closures; and gear restrictions and modifications.''

The description of the Category II ''Mid-Atlantic haul/beach seine'' fishery is replaced with the following: ''The Category II Mid-Atlantic haul/beach seine fishery targets striped bass, mullet, spot, weakfish, sea trout, bluefish, kingfish, and harvestfish using seines

with one end secured (e.g., swipe nets and long seines) and seines secured at both ends or those anchored to the beach and hauled up on the beach. The beach seine system also uses a bunt and a wash net that are attached to the beach and extend into the surf. The fishery occurs in waters west of 72° 30′ W. long. and north of a line extending due east from the NC/SC border. The only haul/beach seine gear operating in NC included in this Category II fishery is the ''Atlantic Ocean striped bass beach seine fishery'' during the winter, as regulated by NC Marine Fisheries Commission rules (NCDMF) and NCDMF proclamations. NCDMF defines a beach seine operating under the Atlantic Ocean Striped Bass beach seine fishery as a ''swipe net constructed of multifilament, multifiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place, and one end of the beach seine is attached to the shore at all times during the operation.'' All other NC small and large mesh beach-anchored gillnets with webbing constructed of all monofilament material or a combination of monofilament and multifilament material were moved to the Category I Mid-Atlantic gillnet fishery in the final 2009 LOF because their construction and fishing technique were more similar to a gillnet than a traditional beach seine. A description of the gear and fishing practices for the haul/beach seine and small and large mesh beach-anchored gillnets operating in NC are found in the final 2008 LOF (72 FR 66048; November 27, 2007) and final 2009 LOF (73 FR 73032, December 1, 2008). In addition to the NC component as described above, the 'Mid-Atlantic haul/beach seine' fishery also includes haul/beach seining in other areas of the mid-Atlantic, including NY through VA. Because the net materials and fishing practices of the Atlantic Ocean striped bass beach seine fishery in NC are different from haul seining in other areas, NMFS may consider splitting this fishery in the future. The Mid-Atlantic haul/beach seine fishery is managed under several state and Interstate FMPs and is an affected fishery under the BDTRP.''

Number of Vessels/Persons

Based on public comments on the proposed 2010 LOF, NMFS agreed that the proposed updates to the estimated number of vessels/persons in several Northeast and Mid-Atlantic fisheries by including available state permit information may complicate management efforts due to uncertainty around the number of active versus passive participants and duplicative permit information. Therefore, NMFS is not finalizing those proposed updates in this final rule. The number of vessels/persons in Atlantic fisheries remains the same as those reported in the 2009 LOF.

The estimated number of vessels or persons in the Category II ''VA pound net'' fishery is updated from 187 to 41.

List of Species and Stocks That are Incidentally Killed or Injured

Harbor porpoise (Gulf of Maine/Bay of Fundy (GME/BF)) is added to the list of marine mammal species and stocks incidentally killed or injured in the Category II ''Northeast bottom trawl fishery.

Fin whale (Western North Atlantic (WNA)) is removed from the list of species and stocks incidentally killed or injured in the Category I ''Northeast/Mid-Atlantic American lobster trap/pot'' fishery.

The superscript ''1'' after humpback whale (Gulf of Maine) and minke whale (Canadian east coast) is removed from the list of species and stocks incidentally killed or injured in the Category I ''Northeast/Mid-Atlantic American lobster trap/pot'' fishery.

The superscript ''1'' after minke whale (Canadian east coast), humpback whale (Gulf of Maine), and North Atlantic right whale (WNA) is removed from the list of species and stocks incidentally killed or injured in the Category I ''Northeast sink gillnet'' fishery.

The superscript ''1'' after harbor porpoise (GME/BF) and humpback whale (Gulf of Maine) is removed from the list of species and stocks incidentally killed or injured in the Category I ''Mid-Atlantic gillnet'' fishery.

Pygmy sperm whale (WNA) is removed from the list of species and stocks incidentally killed or injured in the Category I ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline'' fishery.

Commercial Fisheries on the High Seas

Removal of Fisheries

All unspecified high seas fisheries for all gear types are removed, except for trawl gear. Four trawl gear HSFCA permits remain valid for an unspecified fishery.

Number of HSFCA Permits

As stated in the preamble under ''How Does NMFS Authorize U.S. Vessels to Participate in High Seas Fisheries?,'' some fishers possess valid HSFCA permits for gear types that are no longer authorized for use (therefore, the fishers are unable to fish under the permit). For this reason, the number of HSFCA permits updated below and displayed in Table 3 of this final rule may not accurately represent actual fishing effort by U.S. vessels on the high seas.

The estimated number of HSFCA permits in the High Seas Atlantic Highly Migratory Species fishery is updated for the following gear types: longline, from 75 to 72; trawl, from 3 to 2; handline/pole-and-line from 2 to 1; and troll, from 5 to 7.

The estimated number of HSFCA permits in the High Seas Pacific Highly Migratory Species fishery is updated for the following gear types: drift gillnet, from 5 to 4; trawl, from 14 to 3; purse seine, from 5 to 8; pot, from 8 to 7; longline, from 56 to 62; handline/pole and line, from 18 to 22; liners not elseware identified (NEI), from 3 to 1; multipurpose vessels, from 9 to 7; and troll, from 222 to 249.

The estimated number of HSFCA permits in the High Seas South Pacific Albacore Troll fishery is updated for the following gear types: trawl, from 5 to 2; longline, from 12 to 11; handline/pole and line, from 7 to 8; troll, from 45 to 53; multipurpose vessels, from 6 to 4.

The estimated number of HSFCA permits in the High Seas South Pacific Tuna fishery is updated for the following gear types: purse seine from 23 to 36; longline, from 2 to 3; troll, from 1 to 3.

The estimated number of HSFCA permits in the High Seas Western Pacific Pelagic fishery is updated for the following gear types: trawl, from 11 to 4; purse seine, from 4 to 3; pot, from 8 to 7; handline/pole and line, from 8 to 9; liners NEI, from 2 to 1; multipurpose vessels, from 7 to 5.

List of Species That are Incidentally Killed or Injured

The stock name for false killer whales incidentally killed or injured in the ''High Seas Western Pacific Pelagic (Deep-set component)'' fishery is changed from ''HI'' to ''unknown.'' This fishery is a component of the ''HI deep-set (tuna target) longline/set line'' fishery operating in U.S. waters, which interacts with the ''HI pelagic'' stock of false killer whales. While the animals in this stock are thought to move across the EEZ boundary into the high seas, the stock is currently defined as occurring from 75nmi to the EEZ boundary (2008 SAR). NMFS truncated the stock boundary as ending at the 200nmi EEZ line because of the mandate in section 117 of the MMPA (16 U.S.C. 1386) for NMFS to create SARs and calculate PBR

levels for marine mammal stocks occurring ''in waters under the jurisdiction of the United States.'' Therefore, to be consistent with the stock definition in the final 2008 SARs, NMFS has changed the stock name to ''unknown'' at this time. See the response to comment 17 above for additional information.

Pantropical spotted dolphin (stock unknown) is added to the list of species and stocks incidentally killed or injured in the Category II ''High Seas Western Pacific Pelagic (Deep-set component)'' fishery. This fishery is a component of the ''HI deep-set (tuna target) longline/set line'' fishery operating in U.S. waters.

Spinner dolphin (HI) is removed from the list of species and stocks incidentally killed or injured in the Category I ''High Seas Western Pacific Pelagic (Deep-set component)'' fishery. This fishery is a component of the ''HI deep-set (tuna target) longline/set line'' fishery component operating in U.S. waters.

Pantropical spotted dolphin (stock unknown) is removed from the list of species and stocks incidentally killed or injured in the Category II ''High Seas Western Pacific Pelagic (Shallow-set component)'' fishery. This fishery is a component of the ''HI shallow-set (swordfish target) longline/set line'' fishery operating in U.S. waters.

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/persons 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, disentanglement network data, and fisher reports. This list includes all species and stocks known to be injured or killed in a given fishery, but also includes species and 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 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, operating within U.S. waters and on the high seas. These fisheries, while listed on both Table 1 or 2, and 3, are not separate fisheries. Instead, they are components of a single fishery organized on Table 1, 2, or 3 by geographic region. 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 Plans or Teams.

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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 or 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 pelagic[1] Humpback whale, Central North Pacific Pantropical spotted dolphin, stock unknown Risso's dolphin, HI Short-finned pilot whale, HI Striped dolphin, HI
CATEGORY II		
GILLNET FISHERIES:		
CA halibut/white seabass and other species set gillnet (>3.5 in mesh)	58	California sea lion, U.S.[1] Harbor seal, CA[1] Long-beaked common dolphin, CA Northern elephant seal, CA breeding Sea otter, CA Short-beaked common dolphin, CA/OR/WA
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
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.

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
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)

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded)	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA[1] Harbor seal, WA inland
PURSE SEINE FISHERIES:		
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[1] Short-beaked common dolphin, CA/OR/WA
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 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 Humpback whale, Western North Pacific Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient[1] Minke whale, AK Ribbon seal, AK Spotted seal, AK Steller sea lion, Western U.S.[1]
LONGLINE/SET LINE FISHERIES:		
HI shallow-set (swordfish target) longline/ set line *	28	Bottlenose dolphin, stock unknown Bryde's whale, stock unknown Humpback whale, Central North Pacific[1] Risso's dolphin, stock unknown Sperm whale, stock unknown
American Samoa longline[2]	60	False killer whale, stock unknown
HI shortline[2]	11	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK Bering Sea, Aleutian Islands Pacific cod longline	54	Killer whale, AK resident[1] Ribbon seal, AK Steller sea lion, Western U.S.
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:		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK Southeast salmon purse seine	415	None documented in recent years
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.

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
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

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK State-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish)	1,448	None documented
WA/OR/CA groundfish, bottomfish longline/set line	367	None documented
WA/OR North Pacific halibut longline/set line	350	None documented
CA pelagic longline	6	Risso's dolphin, CA/OR/WA
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.

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
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 coonstripe shrimp, rock crab, tanner crab pot or trap	305	Gray whale, Eastern North Pacific Harbor seal, CA
CA spiny lobster	225	Gray whale, Eastern North Pacific
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

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
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

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
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 or 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 Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine Long-finned pilot whale, WNA Minke whale, Canadian east coast Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast sink gillnet	341	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF[1] Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, Gulf of Maine Minke whale, Canadian east coast North Atlantic right whale, WNA Risso's dolphin, WNA White-sided dolphin, WNA
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline *	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 Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA[1]

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Harbor seal, WNA Humpback whale, Gulf of Maine Minke whale, Canadian east coast North Atlantic right whale, WNA[1]
CATEGORY II		
GILLNET FISHERIES:		
Chesapeake Bay inshore gillnet[2]	45	None documented in recent years
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:		
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

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
Northeast bottom trawl	1,052	Common dolphin, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA[1]
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal[1] West Indian manatee, FL[1]
Atlantic mixed species trap/pot[2]	unknown	Fin whale, WNA Humpback whale, Gulf of Maine
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	40-42	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal[1] Bottlenose dolphin, Western GMX coastal[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	41	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 in recent years
Long Island Sound inshore gillnet	20	None documented in recent years
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet	32	None documented in recent years

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
Southeast Atlantic inshore gillnet	unknown	None documented
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	972	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
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
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 in recent years
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

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
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

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
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 or injured
Category I		
DRIFT GILLNET FISHERIES:		
Pacific Highly Migratory Species * ^	4	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 *+	72	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, stock unknown Humpback whale, Central North Pacific Pantropical spotted dolphin, stock unknown Risso's dolphin, HI Short-finned pilot whale, HI Striped dolphin, HI
Category II		
DRIFT GILLNET FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
TRAWL FISHERIES:		
Atlantic Highly Migratory Species **	2	Undetermined
Pacific Highly Migratory Species **	3	Undetermined
CCAMLR	0	Antarctic fur seal
South Pacific Albacore Troll	2	Undetermined
Western Pacific Pelagic	4	Undetermined

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed or injured
Unspecified	4	Undetermined
PURSE SEINE FISHERIES:		
Pacific Highly Migratory Species * ^	8	None documented
South Pacific Tuna Fisheries	36	Undetermined
Western Pacific Pelagic	3	Undetermined
POT VESSEL FISHERIES:		
Pacific Highly Migratory Species **	7	Undetermined
South Pacific Albacore Troll	5	Undetermined
Western Pacific Pelagic	7	Undetermined
LONGLINE FISHERIES:		
CCAMLR	0	None documented
Pacific Highly Migratory Species * +	62	Risso's dolphin, CA/OR/WA
South Pacific Albacore Troll	11	Undetermined
South Pacific Tuna Fisheries **	3	Undetermined
Western Pacific Pelagic (Shallow-set component) * ^	28	Bottlenose dolphin, stock unknown Bryde's whale, stock unknown Humpback whale, Central North Pacific Risso's dolphin, stock unknown Sperm whale, stock unknown
HANDLINE/POLE AND LINE FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
Pacific Highly Migratory Species	22	Undetermined
South Pacific Albacore Troll	8	Undetermined
Western Pacific Pelagic	9	Undetermined
TROLL FISHERIES:		
Atlantic Highly Migratory Species	7	Undetermined
South Pacific Albacore Troll	53	Undetermined
South Pacific Tuna Fisheries **	3	Undetermined
Western Pacific Pelagic	44	Undetermined

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed or injured
LINERS NEI FISHERIES:		
Pacific Highly Migratory Species **	1	Undetermined
South Pacific Albacore Troll	1	Undetermined
Western Pacific Pelagic	1	Undetermined
FACTORY MOTHERSHIP FISHERIES:		
Western Pacific Pelagic	1	Undetermined
MULTIPURPOSE VESSELS NEI FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
Pacific Highly Migratory Species **	7	Undetermined
South Pacific Albacore Troll	4	Undetermined
Western Pacific Pelagic	5	Undetermined
Category III		
TROLL FISHERIES:		
Pacific Highly Migratory Species *	249	None documented

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 or injured in this fishery has been observed taken by this fishery on the high seas.
^ The list of marine mammal species killed or injured in this fishery is identical to the list of marine mammal species killed or 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 (Gulf of Maine) and 229.34 (Mid-Atlantic)	Category I Mid-Atlantic gillnet Northeast sink gillnet
Pelagic Longline Take Reduction Plan (PLTRP) – 50 CFR 229.36	Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline
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
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 the portion of the fishery operating 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/

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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 44,600 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 state and Federal fishery permit or landing license, or who are authorized through another related state and Federal fishery registration program, are currently not required to register separately under the MMPA or pay the $25 registration fee. 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. The Council of Environmental Quality (CEQ) recommends agencies review EAs every five years; therefore, NMFS reviewed the 2005 EA in 2009. NMFS concluded that, because there have been no changes to the process used to develop the LOF and implement section 118 of the MMPA (including no new alternatives and no additional or new impacts on the human environment), there is no need to update the 2005 EA at this time. 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.

References

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NMFS. 2005. Revisions to Guidelines for Assessing Marine Mammal Stocks. 24 pp. Available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/gamms2005.pdf*

Dated: November 9, 2009.

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[FR Doc. E9–27431 Filed 11–13–09; 8:45 am]

BILLING CODE 3510–22–S