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National Oceanic and Atmospheric Administration

50 CFR Part 229
List of Fisheries for 2012; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 110207104–1536–02]

RIN 0648–BA76

List of Fisheries for 2012

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 2012, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2012 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify 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 classification of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: This final rule is effective January 1, 2012.

ADDRESSES: 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 Nathan Frey, OMB, by fax to (202) 395–7285 or by email to *Nathan_Frey@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa Andersen, Office of Protected Resources, (301) 713–2322; David Gouveia, Northeast Region, (978) 281–9280; Laura Engleby, Southeast Region, (727) 551–5791; 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, information on each Category I and II fishery, 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: Allison Rosner;

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

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

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 1110, 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 TRP 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 (*i.e.,* frequent incidental mortality and serious injuries of marine mammals).

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 (*i.e.,* occasional incidental mortality and serious injuries of marine mammals).

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 (*i.e.,* a remote likelihood or no known incidental mortality and serious injuries of marine mammals).

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

Because fisheries are classified 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 classified 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

There are several fisheries on the LOF classified as Category II that have no recent documented injuries or mortalities of marine mammals, or fisheries that did not result in a serious injury or mortality rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries as Category II by analogy to other Category I or II fisheries (NMFS does not classify fisheries as Category I based on analogy) that are sufficiently analogous to the fishery in question (*e.g.,* use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals), or according to factors discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995) and listed in the regulatory definition of a Category II fishery. The regulations at 50 CFR 229.2 state that in the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality is ''occasional'' or ''remote'' 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.'' Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

Information That May Be Considered When Classifying Fisheries

Under regulations pursuant to section 118 of the MMPA, observer data, logbook data, stranding data, fishers' reports, anecdotal reports, and information on incidental serious injury or mortality to marine mammals reported in SARs are used to classify fisheries (60 FR 45086, August 30, 1995; 60 FR 67063, December 28, 1995). Further, the factors for consideration laid out in 50 CFR 229.2 (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), generally termed ''analogy'' in the LOF, are used to classify fisheries in the absence of reliable data on the frequency of interactions.

How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?

The LOF includes a list of marine mammal species or stocks incidentally killed or injured in each commercial fishery. To determine which species or 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, fisher self-reports, and anecdotal reports.

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 TRP or a fishery management plan (FMP)). NMFS will provide case-specific justification in the LOF for changes to the list of species or stocks incidentally killed or injured.

How does NMFS determine the levels of observer coverage in a fishery on the LOF?

Data obtained from the observer program and the observer coverage levels in a particular fishery are important tools in estimating the level of annual 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 on the LOF, including observer coverage in those fisheries. 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. Fishery 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 Resources' Web site at: *http://www.nmfs.noaa.gov/pr/sars/.* Information on observer coverage levels in Category I and II fisheries can also be found in the Category I and II fishery fact sheets on the NMFS Office of Protected Resources Web site: *http://www.nmfs.noaa.gov/pr/interactions/lof/.* Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's Web site: *http://www.st.nmfs.gov/st4/nop/.*

How do I find out if a specific fishery is in category I, II, or III?

This final rule includes three tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S.-authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRT).

Are high seas fisheries included on the LOF?

NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas 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 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. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

HSFCA permits are valid for five years, during which time FMPs can change. Therefore, some vessels/participants 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).

Where can I find specific information on fisheries listed on the LOF?

NMFS maintains summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: when the fishery was added to the LOF, the basis for the fishery's initial classification, classification changes to the fishery, changes to the list of species or stocks incidentally killed or injured in the fishery, fishery gear and methods used, observer coverage levels, fishery management and regulation, and applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under ''How Do I Find Out if a Specific Fishery is in Category I, II, or III?'' on the NMFS Office of Protected Resources' Web site: *http://www.nmfs.noaa.gov/pr/interactions/lof/,* linked to the ''List of Fisheries by Year'' table. NMFS is developing similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets will take significant time to complete. NMFS anticipates posting the Category III fishery fact sheets along with the final 2013 LOF, although this timeline may be revised as this exercise progresses.

Am I required to register under the MMPA?

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

How do I register and receive my authorization certificate and injury/mortality reporting forms?

NMFS has integrated the MMPA registration process, implemented through 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 Southwest, Northwest, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate and/or injury/mortality reporting forms via U.S. mail or with their state or Federal license at the time of renewal.

In the Pacific Islands region, NMFS will issue vessel or gear owners who hold a Federal permit an authorization certificate and/or injury/mortality reporting forms via U.S. mail or with their Federal permit at the time of renewal; for vessel or gear owners holding state licenses only, NMFS will issue an authorization certificate via U.S. mail automatically at the beginning of each calendar year. Individuals participating in Category I or II fisheries who obtain state commercial marine licenses after the beginning of the calendar year may request an authorization certificate and/or injury/mortality reporting forms by contacting the NMFS Pacific Islands Regional Office at (808) 944–2200.

In the Northeast region, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year; but vessel or gear owners must request or print injury/mortality reporting forms by contacting the NMFS Northeast Regional Office at (978) 281–9328 or by visiting the Northeast Regional Office Web site (*http://www.nero.noaa.gov/*).

In the Southeast region, NMFS will issue vessel or gear owners notification of registry and vessel or gear owners may receive their authorization certificate and/or injury/mortality reporting form by contacting the Southeast Regional Office at (727) 209–5952 or by visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/pr/mm/mmap.htm*) and following the instructions for printing the necessary documents.

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 renew my registration under the MMPA?

In Pacific Islands, Southwest, Alaska or Northeast regional fisheries, registrations of vessel or gear owners are automatically renewed and participants should receive an authorization certificate by January 1 of each new year. In Northwest regional fisheries, vessel or gear owners 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**).

In Southeast regional fisheries, vessel or gear owners may receive an authorization certificate by contacting the Southeast Regional Office or visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/pr/mm/mmap.htm*) and following the instructions for printing the necessary documents.

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 fishery listed on the LOF must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II or III) within 48 hours of the end of the fishing trip. 50 CFR 229.2 defines an injury as ''a wound or other physical harm,'' and includes examples of signs of injury. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. Injury/mortality reporting forms and instructions for submitting forms to NMFS can be downloaded from: *http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf* or by contacting the appropriate Regional office (see **ADDRESSES**). Reporting requirements and procedures can be found in 50 CFR 229.6.

Am I required to take an observer aboard my vessel?

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 (16 U.S.C. 1387) 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, regardless of vessel size, 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)). Observer requirements can be found in 50 CFR 229.7.

Am I required to comply with any marine mammal take reduction plan regulations?

Table 4 in this final rule provides a list of fisheries affected by TRPs and TRTs. TRP regulations can be found at 50 CFR 229.30 through 229.36. A description of each TRT and copies of each TRP can be found at: *http://www.nmfs.noaa.gov/pr/interactions/trt/.*

Sources of Information Reviewed for the Final 2012 LOF

NMFS reviewed the marine mammal incidental injury, serious injury and mortality information presented in the SARs for all fisheries. 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 fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, reports to the SRGs, conference papers, anecdotal reports, FMPs, and ESA documents.

The final LOF for 2012 was based on information provided in the NEPA and ESA documents analyzing authorized high seas fisheries; stranding data; fishermen self-reports through the MMAP; observer program reports; anecdotal reports; 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), 2008 (74 FR 19530, April 29, 2009), 2009 (75 FR 12498, March 16, 2010), and 2010 (76 FR 34054, June 10, 2011). 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 on the 2012 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, through state agencies, or through the fishery fact sheets available on the NMFS Office of Protected Resources Web site (*http://www.nmfs.noaa.gov/pr/interactions/lof/).* Additional details for Category I and II fisheries operating on the high seas are included in various FMPs, NEPA, or ESA documents.

State and regional abbreviations used in the following text include: AK (Alaska), BSAI (Bering Sea, Aleutian Islands), CA (California), DE (Delaware), FL (Florida), GMX (Gulf of Mexico), HI (Hawaii), MA (Massachusetts), ME (Maine), MHI (Main Hawaiian Islands), NC (North Carolina), NY (New York), OR (Oregon), RI (Rhode Island), SC (South Carolina), VA (Virginia), WA (Washington), and WNA (Western North Atlantic).

Southeastern U.S. Atlantic, Gulf of Mexico Stone Crab Trap/Pot Fishery

The ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery operates primarily nearshore in the State of FL. Stone crab fishing outside of this area is likely very minimal. In 2010, the State of FL issued 1,282 commercial stone crab licenses and 1,190,285 stone crab trap tags. FL state regulations limit recreational stone crab trap/pot numbers to five per person (FL Administrative Code (F.A.C.) Chapter 68B–13). The season for commercial and recreational stone crab harvest is from October 15 to May 15. Traps are the most typical gear type used for the commercial and recreational stone crab fishery. Commercial traps must be designed to conform to the specifications established under U.S. 50 CFR 654.22, as well as F.A.C. Chapter 68B–13. Baited traps are frequently set in waters of 65 ft (19.8 m) depth or less in a double line formation, generally 100–300 ft (30.5–91.4 m) apart, running parallel to a bottom contour. The margins of seagrass flats and bottoms with low rocky relief are also favored areas for trap placement. Buoys are attached to the trap/pot via float line. In FL, commercial trap/pot buoys are required to be marked with the letter ''X,'' the trap owner's stone crab endorsement number (in characters at

least 2 inches high), and a tag that corresponds to a valid FWC-issued trap certificate. Recreational trap/pot buoys, except those fished from a dock, must have a permanently affixed and legible ''R'' at least 2 inches high and the harvester's name and address (Ch. 68B–13.009(3), F.A.C).

Comments and Responses

NMFS received 19 comment letters on the proposed 2012 LOF (76 FR 37716, June 28, 2011). Comments were received from the Blue Water Fishermen's Association, Center for Biological Diversity, Florida Fish and Wildlife Conservation Commission, Florida Keys Commercial Fishermen's Association, Freezer Longline Coalition, Garden State Seafood Association, Hawaii Longline Association, Humane Society of the United States, Marine Mammal Commission, Natural Resources Defense Council, State of Hawaii, U.S. Fish and Wildlife Service, Western Pacific Regional Fishery Management Council, and 6 individuals. Comments on issues outside the scope of the LOF were noted, but are generally not responded to in this final rule.

General Comments

Comment 1: An individual commenter recommends NMFS inform the U.S. Department of Defense (DOD) of the LOF, NMFS, and MMPA. The commenter further wondered whether the Navy is also a contributor of injury or death of animals listed on the LOF, if the process is complying with Advisory Council on Historic Preservation Section 106, and, if so, which Native Hawaiian Organizations are involved.

Response: Certain military readiness activities are subject to sections 101(a)(5)(A) and (D) of the MMPA, which authorizes the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals subject to required notifications and determinations. However, the Navy is not subject to section 118 of the MMPA, which applies to commercial fisheries. National Historic Preservation Act (NHPA) section 106 generally requires federal agencies to consult the appropriate State Historic Preservation Office (SHPO) and/or Tribal or Native Hawaiian groups on undertakings, including projects, activities, and programs that may affect qualifying historic properties. The LOF only involves classification determinations for commercial fisheries based upon marine mammal interactions, and is not a federal undertaking under the NHPA.

Comment 2: The Marine Mammal Commission (Commission) acknowledges NMFS' efforts for summarizing and providing information about observer coverage and other characteristics of listed fisheries, and commends NMFS for its efforts to centralize information used to classify Category III fisheries and looks forward to seeing this effort come to fruition. The Commission appreciates that NMFS has considered their concerns and is exploring ways to fully and effectively convey the reasons for listing fisheries, which must be based on the best available information and may or may not include observer-derived data.

Response: NMFS agrees that summarizing the information used as the basis to classify each fishery on the LOF in one location could be useful for interested readers. NMFS has posted information on each Category I and II fishery on the LOF on the NMFS Office of Protected Resources Web site, where it can be considered at the readers' discretion, and is pleased the Commission finds the information useful while reviewing the LOF. NMFS is developing similar fishery fact sheets for each Category III fishery and anticipates posting those fishery fact sheets along with the final 2013 LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, this timeline may be revised as this exercise progresses.

Comment 3: The Center for Biological Diversity (CBD) notes that the proposed 2012 LOF once again includes aquaculture operations as Category III fisheries and reiterates comments on past LOFs that aquaculture facilities are not ''commercial fishing operations'' eligible for the take authorization contained in Section 118 of the MMPA. The CBD states that these operations consistently compete with marine mammals for habitat and resources due to their stationary nature; therefore, aquaculture facilities and activities are more appropriately subject to the take prohibitions and permitting regimes contained in Section 101 of the MMPA.

Response: NMFS received similar comments on the 2009 and 2010 LOFs. Section 118 of the MMPA governs the ''taking of marine mammals incidental to commercial fishing operations.'' The MMPA does not provide a definition of a commercial fishing operation; therefore, NMFS defined ''commercial fishing operation'' in regulations at 50 CFR 229.2. The definition was presented in the proposed and final rules implementing the regulations for section 118 of the MMPA (60 FR 31666, June 16, 1995; 60 FR 65086, August 30, 1995). As noted in those proposed and final rules, and in the responses to comments on the 2009 and 2010 LOFs (73 FR 73032, December 1, 2008, comment/response 5; 74 FR 58859, November 16, 2009, comment/response 11), the definition of a ''commercial fishing operation'' includes aquaculture. 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 and are therefore included on the annual LOF.

Comment 4: The CBD urges NMFS not to reclassify fisheries to a less serious category when information on the fishery and its interactions with marine mammals is scant. In these cases, the CBD urges NMFS to instead rely more heavily upon the known impacts of the fishery's gear and the marine mammals known to inhabit the area being fished, rather than relying, for example, on the lack of reported interactions in fisheries with little or no observer coverage. The CBD states that every Federal FMP by law must include ''a standardized reporting methodology to assess the amount and type of bycatch,'' and that the ESA and MMPA make no exceptions to protection on the basis of state versus Federal fisheries. The CBD asserts that failure to assess marine mammal bycatch is an unacceptable justification for denying marine mammals protection via the LOF.

Response: NMFS considers a broad range of information when proposing or making fishery classification decisions on the LOF, and does not classify fisheries based solely on the presence or absence of serious injuries or mortalities obtained through observer programs. Under regulations pursuant to section 118, NMFS uses observer data, logbook data, stranding data, fishers' reports, anecdotal reports, qualitative factors outlined in 50 CFR 229.2 (*i.e.,* 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), information on incidental serious injury or mortality to marine mammals reported in SARs (50 CFR 229.2; 60 FR 45086, August 30, 1995; 60 FR 67063, December 28, 1995), and input received during the public comment periods.

NMFS considers all of the information to determine whether the fishery can be classified on the LOF based on quantitative information analyzed through the Tier 1 and 2 analyses; or whether the fishery can be classified on the LOF based on the qualitative information outlined in NMFS regulations at 50 CFR 229.2 (and presented above).

Comments on Commercial Fisheries in the Pacific Ocean

Comment 5: The Freezer Longline Coalition (FLC) recommends the ''BSAI Pacific cod longline'' fishery be reclassified as Category III because the annual serious injury and mortality for all stocks listed as killed or injured in this fishery is less than 1 percent of PBR for the most recent five-year period (2004–2008). The FLC states that the 2010 SAR shows that there are no serious injuries or mortalities of killer whales (AK resident stock) or ribbon seals from 2004–2008, and the mean annual serious injury and mortality of Steller sea lions (Western distinct population segment) is 0.488 percent of PBR; however, the fishery continues to be classified as Category II based on serious injury and mortality of resident killers whales from 2002–2006. The FLC asserts that the fishery should not continue to be classified based on outdated data simply because NMFS has been unable to ''finalize'' data for 2007 and 2008, which is inconsistent with the MMPA's best available science mandate, the Information Quality Act, and NMFS' associated guidelines.

Response: The classification of fisheries for the proposed 2012 LOF was based on the best available scientific information at the time the fishery classifications were made. In this case, the most current available information on serious injury and mortality of marine mammals was presented in the final 2010 SAR, which included an analysis data from 2002–2006. More recent data from a new analysis for the 2007–2010 period will be available for use in classifying fisheries on the 2013 LOF. At that time, NMFS will consider the information available from the new analysis and consider a reclassification for the BSAI Pacific cod longline fishery, if appropriate.

Comment 6: The FLC asserts that the estimated mortality reported in the SARs for AK longline fisheries uses incorrect observer coverage percentages, resulting in significant overestimation of mortality. The FLC further asserts that the default recovery factors used for multiple AK marine mammal stocks need to be re-evaluated for populations that are increasing, have a large population, or whose population status is known.

Response: NMFS does not calculate observer percentages or recovery factors in the annual LOF, instead this information is provided in the SARs after NMFS and the Alaska SRG have evaluated the information during their annual review. Therefore, NMFS suggests the FLC submit this comment during the public comment period for the draft 2011 SARs. Further, NMFS responded to similar comments on the 2009 SARs and therefore refers the FLC to that **Federal Register** notice for additional information (75 FR 12498, March 16, 2010; comment/response 13 and 16).

Comment 7: The Commission concurs that the ''CA thresher shark/swordfish drift gillnet'' fishery meets the criteria for Category II and concurs with the designation of the CA/OR/WA stock of humpback whales as the basis for that classification.

Response: NMFS acknowledges this comment. The ''CA thresher shark/swordfish drift gillnet'' fishery is classified as Category II in this final rule.

Comment 8: The Humane Society of the United States (HSUS) supports the elevation of the ''CA thresher shark/swordfish drift gillnet'' fishery to Category II. The HSUS notes that there is a long-standing record of interactions between drift gillnet fisheries and protected species worldwide and feels it is appropriate for NMFS to develop a better understanding of this driftnet fishery and the extent to which it interacts with marine mammals through use of observer coverage, which is more likely for a fishery placed in Category II.

Response: NMFS acknowledges this comment and notes that this fishery is subject to requirements under the Pacific Offshore Cetacean Take Reduction Plan and is regulated under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species, which authorizes NOAA to place observers on fishing vessels in west coast highly migratory species fisheries (such as drift gillnet), regardless of the LOF category.

Comment 9: The U.S. Fish and Wildlife Service (USFWS) reiterated a recommendation made on the 2011 LOF to include southern sea otters on the list of species/stocks killed or injured in the Category III ''CA spiny lobster trap'' or the ''CA coonstripe shrimp, rock crab, tanner crab pot or trap'' fisheries because experiments have shown that sea otters can enter these traps and drown. The USFWS provided a publication by Hatfield *et al.* (2011) to support this recommendation.

Response: NMFS responded to a similar comment on the 2011 LOF (75 FR 68475, November 8, 2010, comment/response 13) and provided detailed information on an extensive review of marine mammal interactions with West Coast trap and pot gear in the proposed 2009 LOF (73 FR 33760, June 13, 2008). In 2008, NMFS Southwest Regional Office (SWRO) consulted with experts on marine mammals and pot/trap fisheries including the NMFS Southwest Fisheries Science Center, NMFS Northwest Fisheries Science Center, NMFS Northwest Regional Office, and CA Department of Fish and Game (CDFG) to evaluate which fisheries may be affecting marine mammals. The primary intent of the analysis was to review interactions between trap/pot gear and humpback whales, but all marine mammals were addressed in the review. During the 2008 review, the only information available on southern sea otter interactions with trap/pot gear were stranding records of from 1987 and 1991 (2008 SAR; pers. comm. with staff from CDFG). At that time, NMFS determined that sea otters should be removed from the list of species killed or injured in the ''CA spiny lobster trap'' and the ''CA coonstripe shrimp, rock crab, tanner crab pot or trap'' fisheries because the information was approximately 20 years old and there had been no indications of interactions since that time. NMFS SWRO continues to consult with NMFS and CDFG specialists regarding marine mammal interactions with trap/pot gear. NMFS has not received additional information since 2008 to suggest that southern sea otters are currently being incidentally killed or injured in pot and trap gear.

As part of their public comment, the USFWS submitted a paper by Hatfield *et al.* (2011), detailing experiments that indicate sea otters can enter and become entrapped in traps with openings of certain sizes. However, this paper presented no evidence of such takes occurring during commercial fishing activities off CA. The possibility of an interaction is insufficient justification to include southern sea otters on the list of species incidentally injured or killed in the ''CA spiny lobster trap'' or the ''CA coonstripe shrimp, rock crab, tanner crab pot or trap'' fisheries. Instead, NMFS needs some indication that takes are occurring or have occurred in these fisheries in recent years (*e.g.,* fisher self reports, observer data, stranding data). If additional information becomes available to indicate that southern sea otters have been injured or killed in CA trap/pot fisheries in recent years, NMFS

will consider including this species on the LOF at that time.

Comment 10: The Hawaii Longline Association (HLA) believes that the abundance estimate for the false killer whale (pelagic stock) is not scientifically sound and, because the survey data used for that abundance estimate was collected in 2002, that NMFS is using data it knows to be stale to make LOF determinations for the 2012 LOF (as defined by NMFS guidelines). The HLA views these errors to be particularly acute because NMFS completed a new marine mammal survey in the Hawaiian EEZ in 2010; however, this current, available data are not the data upon which the proposed 2012 LOF is based. Therefore, the HLA asserts that if the 2012 LOF is issued as proposed (*i.e.,* not based on the 2010 data), it would violate the MMPA's ''best available science'' mandate.

Response: NMFS used the best available science in preparing the 2012 LOF. Proposed changes to the 2012 LOF were developed in spring and summer 2011, and were largely based on the draft and final 2010 SARs, which were the most recent SARs available. NMFS conducted a new cetacean assessment survey in the U.S. EEZ around the Hawaiian Islands (HICEAS II) in August–December 2010, with the goal of updating abundance estimates for all Hawaiian cetaceans. The survey data are currently being analyzed, and abundance estimates and PBR calculations based on the data are not yet available. Preliminary estimates of abundance based on the visual sightings data will be included in the draft 2012 SAR, which is expected to be published and available for public review and comment in spring 2013. The acoustic and other data collected during the survey will take longer to analyze, and abundance estimates will likely be revised in future SARs to incorporate the new analysis. The currently available data and estimates still constitute the best available information within existing NMFS parameters and therefore are appropriately included in the final 2010 SARs, draft 2011 SARs, and the 2012 LOF.

Comment 11: The Western Pacific Fishery Management Council (Council) and the HLA both recommend that the ''HI shallow-set (swordfish target) longline/set line'' fishery be classified as a Category III. The Council and the HLA note that this fishery is classified as Category II based on one serious injury of a bottlenose dolphin (HI stock) within the HI EEZ. The commenters note that the only other fishery to have incidental serious injury or mortality of this stock is the ''HI deep-set (tuna target) longline/set line'' fishery, and the combined serious injury and mortality rate for these two fisheries is less than 10 percent of PBR. The Council and HLA further note that the analysis for fishery classification places all fisheries interacting with a stock in Category III if the total interaction rate is equal to or less than 10 percent of the PBR unless a fishery qualifies for another Category for a different stock; however, no other marine mammal stock qualifies the HI shallow-set fishery for Category I or II.

Response: NMFS concurs that, based on the marine mammal interactions within the U.S. EEZ reported in the final 2010 SAR, the shallow-set longline fishery would meet the definition of a Category III fishery. There are no marine mammal stocks within the EEZ that have mortality and serious injury that exceed 10 percent of PBR across all fisheries and that individually exceed 1 percent of PBR in the shallow-set fishery. However, there are documented injuries and mortalities of numerous species and stocks of marine mammals by the shallow-set longline fishery on the high seas, which are listed in Table 3 for the high seas component of the shallow-set longline fishery (''Western Pacific Pelagic (HI Shallow-set component)''). Because there currently are no abundance estimates or PBRs available for most of these marine mammal stocks on the high seas, quantitative comparison of mortality and serious injury against PBR is currently not possible.

MMPA regulations (50 CFR 229.2) provide that in the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality 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. HI-based shallow-set fishing vessels operating within the U.S. EEZ and on the high seas employ the same vessels, the same fishing methods and gear, target the same fish stocks, and employ the same marine mammal mitigation and deterrence measures. A review of NMFS observer data indicates that approximately 7 percent of shallow-set trips from 2004–2008 had marine mammal interactions, including interactions with Bryde's whale, Risso's dolphin, humpback whale, striped dolphin, bottlenose dolphin, and Kogia sp. whale (pygmy or dwarf sperm whale). The number and rate of marine mammal interactions increased each year in that 5-year timeframe. Of the 22 total marine mammal interactions observed on 325 shallow-set trips from 2004–2008, 19 were taken on the high seas. Seventeen of the total 22 observed interactions resulted in mortality or serious injury, 16 of which occurred on the high seas (Forney, 2010; NMFS Pacific Islands Regional Observer Program, 2004–2008). Although NMFS is currently unable to quantitatively establish the impact of these interactions on high seas marine mammal stocks because of the lack of population information, these interactions do provide qualitative evidence that the shallow-set fishery continues to have ''occasional'' interactions with marine mammals and should remain a Category II commercial fishery.

As noted in the preamble of the proposed 2012 LOF and the response to a comment in the final 2010 LOF (74 FR 58859, November 16, 2009; comment/response 17) regarding high seas fisheries classification, the high seas portion of the shallow-set longline fishery is an extension of the fishery operating within U.S. waters, and is not a separate fishery. A fishery is classified on the LOF as its highest level of classification (*e.g.*, a fishery qualifying for Category II for one marine mammal stock and Category III for another marine mammal stock will be listed as Category II). Because the ''Western Pacific Pelagic (HI Shallow-set component)'' and ''HI shallow-set (swordfish target) longline/set line'' are two components of the same fishery, both components are classified as Category II.

The Category II classification is further supported by data in the draft 2011 SAR, which was not available when the proposed 2012 LOF was drafted. The draft 2011 SAR reports an observed serious injury to a false killer whale in the shallow-set fishery within the U.S. EEZ in 2009. Based on one observed non-serious injury in 2008 and one observed serious injury in 2009, the shallow-set fishery has an average annual mortality and serious injury rate of 0.2 HI pelagic false killer whales per year within the EEZ. This represents approximately 8 percent of the stock's PBR level, which also qualifies it as a Category II fishery.

Comment 12: The HLA disagrees with the addition of the insular stock of false killer whales to the list of stocks incidentally injured or killed in the ''HI deep-set (tuna target) longline/set line'' fishery because the inclusion is based

on NMFS' proration of an isolated non-serious interaction between this fishery's insular stock and pelagic stock interaction rate, which is not based on the best available science. The HLA asserts that this fishery has never been observed to interact with the insular stock and that the interaction in question occurred in an area where no member of the insular stock has ever been observed in or near, and that NMFS has no genetic evidence showing that the deep-set fishery has ever interacted with a member of the insular stock. The HLA also disagrees with NMFS' extension of the 140 km insular stock ''range'' uniformly around the MHI based on a single tagged animal over 100 km to the south of the MHI.

Response: NMFS determines which species or stocks are included as incidentally killed or injured in a fishery by annually reviewing the information presented in the current SARs, among other relevant sources. The SARs are based on the best available scientific information and provide the most current and inclusive information on each stock, including range, abundance, PBR level, and level of interaction with commercial fishing operations. The LOF does not analyze or evaluate the SARs. The commenter questions the validity of the data and calculations contained within the SAR for false killer whales; and, thus, NMFS encourages the commenter to submit this comment during the public comment period for the draft SAR.

The draft 2011 SAR for false killer whales indicates an average of 0.6 mortalities or serious injuries of HI insular false killer whales per year incidental to the HI-based deep-set longline fishery. One non-serious injury to a false killer whale was observed within the overlap zone between the HI insular and HI pelagic stocks of false killer whales. In the SAR, all estimated takes, and observed takes for which an injury severity determination could not be made, were prorated based on the proportions of observed interactions that resulted in death or serious injury, or non-serious injury between 2000–2009. Further, takes of false killer whales of unknown stock origin within the insular/pelagic stock overlap zone were prorated assuming that the density of the insular stock declines and the density of the pelagic stock increases with increasing distance from shore. No genetic samples are available to establish stock identity for these takes, but both stocks are considered at risk of interacting with longline gear within this region.

Additionally, the draft 2011 SAR reports that from 2005–2009, eight unidentified cetaceans, known to be either false killer whales or short-finned pilot whales (together termed ''blackfish'') were seriously injured in the deep-set longline fishery within U.S. EEZ waters, two of which were taken within the insular stock range. The draft 2011 SAR prorates blackfish to each species and stock based on their distance from shore (see McCracken, 2010 for details on the distance-from-shore model).

For these reasons, NMFS is not changing its proposal to add the HI insular stock of false killer whales on the list of marine mammal stocks incidentally killed or injured in the HI deep-set longline fishery. For a more complete analysis of the methodology for determining mortality and serious injury of insular and pelagic false killer whales, the commenter is referred to the draft 2011 SAR.

Comment 13: The CBD recommends NMFS classify ''American Samoa longline'' fishery as Category I based on analogy to the ''HI deep-set (tuna target) longline/set line'' fishery, interactions with false killer whales, and interactions with rough-toothed dolphins, citing three arguments. First, CBD notes that NMFS has proposed to require longline hooks in this fishery are set at depths of 100 meters or deeper to reduce interactions with Pacific green sea turtles (76 FR 32929, June 7, 2011), which will make the gear and methods like the Category I Hawaii deep-set longline fishery. Second, CBD asserts that even though abundance estimates are unavailable for the American Samoa false killer whale stocks, the human-caused mortality falls within the range of likely PBRs for both of these marine mammal stocks and the 2010 SAR concludes that the false killer whales in American Samoa would probably be strategic if abundance estimates were available. Lastly, CBD notes that this fishery also interacts with the American Samoa stock of rough-toothed dolphins, for which the 2010 SAR indicates the estimated rate of fisheries-related mortality or serious injury (3.6 dolphins per year) is within the range of likely PBRs (3.4–22).

Response: Abundance estimates for the American Samoa stocks of false killer whales and rough-toothed dolphins are unknown, and PBRs cannot be calculated. The final 2010 SARs present a plausible range of abundance estimates for each stock based on density estimates of the species in other areas of the Pacific, and calculate a range of likely PBRs using those ranges of abundance. The SARs further note that estimated mortality and serious injury of false killer whales exceeds the range of the stock's likely PBRs, and mortality and serious injury of rough-toothed dolphin falls within the range of the stock's likely PBRs. These estimates provide an indication that cetacean bycatch in the fishery is not insignificant. However, without an actual calculation of PBR, NMFS cannot accurately evaluate the effect of mortality and serious injury on the stocks to determine whether the fishery meets the definition of a Category I fishery. Under NMFS regulations, a Category I is one that cause frequent mortality or serious injury of marine mammals, which is defined as ''one that is by itself responsible for the annual removal of 50 percent or more of any stock's potential biological removal level'' (50 CFR 229.2). Only in the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals does NMFS consider other factors that may be used to classify the fishery as either Category II or III, including evaluation of 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 (50 CFR 229.2). Until quantitative information is available to allow a calculation of PBR, NMFS will retain the American Samoa longline fishery as Category II, by analogy to other longline fisheries.

Comment 14: The CBD recommended NMFS classify the ''HI vertical longline'' and ''HI kaka line'' fisheries as Category I based on serious injury and mortality of false killer whales (HI insular stock), which is proposed to be listed as endangered under the ESA (75 FR 70169, November 17, 2010). The CBD notes that the ESA scientific Biological Review Team (BRT) for this stock found a high level of current and future risk from interactions with troll, handline, shortline, and kaka line fisheries (Id. at 70180), and the BRT stated that although ''each of these fisheries is required by law under the MMPA to report interactions with marine mammals, the low number of reports strongly suggests that interactions are occurring and are not being reported'' (Id. at 70179). Lastly, the CBD asserts that a high level of anecdotal evidence, including fishermen that have reported shooting at false killer whales and a high rate of dorsal fin disfigurements consistent with injuries from unidentified fishing line, and the fact that the State of HI does not monitor

bycatch of marine mammals in any of its state fisheries, also suggest that the fisheries are having a greater impact than is reported. Therefore, the CBD asserts that the scientific information and opinion show that fisheries interactions present a high risk of extinction to the insular false killer whale, compelling NMFS to list these fisheries as Category I, especially in light of what appears to be deliberate efforts to obscure fishery mortality in order to prevent further protection for an endangered marine mammal.

Response: At this time, there is no quantitative information to support a Category I classification for either of these fisheries. As stated in the response to comment 13, a Category I fishery is one that NMFS determines has frequent incidental mortality and serious injury of marine mammals, defined as one that is, by itself, responsible for the annual removal of 50 percent or more of any stock's PBR level (50 CFR 229.2). NMFS considers other factors when determining whether a fishery meets the definition of a Category II or III fishery, including evaluation of 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 (50 CFR 229.2). Currently, NMFS does not have reliable information that either of these fisheries causes frequent incidental mortality and serious injury of marine mammals, such that would support classification of a Category I fishery, as that term is defined. Based on the currently available information, NMFS continues to believe that these two fisheries present a remote likelihood of interactions with marine mammals. NMFS is retaining these fisheries on the LOF as Category III fisheries but will consider any information that supports a reevaluation of the fisheries' classification in the future.

Comment 15: The CBD comments that the various fisheries that are known or suspected of interacting with Hawaiian monk seals should be classified as Category I because, given the critically endangered status of the monk seal, any interaction is significant. The CBD notes that fishery interactions are becoming more common (Baker *et al.,* 2011), yet all Hawaiian fisheries known or suspected of interactions with monk seals, such as the Hawaii lobster trap and the Hawaii tuna handline, are listed as Category III. Further, the CBD asserts that, while a PBR is not calculated for this stock (final 2010 SAR), any mortality from fisheries would qualify the fishery for Category I if a PBR was calculated.

Response: 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) deep sea bottomfish handline'' fisheries. In the 2009 LOF, NMFS removed the Hawaiian monk seal from the list of species/stocks killed/injured in the ''HI tuna handline fishery,'' under which the stock had been listed since the 1996 LOF, because NMFS has never received a report of interactions between monk seals and tuna handline gear. The available information on Hawaiian monk seal interactions with the other two fisheries is:

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

(2) ''HI Main Hawaiian Islands deep sea bottomfish handline fishery:'' A Federal observer program of the Northwestern Hawaiian Islands (NWHI) bottomfish handline fishery was conducted from the fourth quarter of 2003 through 2005, and no monk seal interactions were observed. The fishery has since been phased out as required under the Proclamation establishing the Papahanaumokuakea Marine National Monument. While fishing in the NWHI has been phased out, in previous years when commercial bottomfish boats were fishing in this area, NMFS received one self-reported incident (a hooking in 1994), and bottomfish hooks were observed in two seals at the French Frigate Shoals (one in 1982 and one in 1993). NMFS also had reports from the mid-1990s of seals stealing catch, seals being fed bait or non-target species by fishermen to discourage seals from taking catch, and some seals becoming hooked and cut free. The final 2010 SAR notes that no mortality or serious injuries have been attributed to the MHI deep sea bottomfish handline fishery.

While there have been no observed or reported interactions between monk seals and the ''HI lobster trap'' and ''HI Main Hawaiian Islands deep sea bottomfish handline'' fisheries 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 MHIs are hooked and entangled but at a rate that has not been reliably assessed (final 2010 SAR). NMFS cannot confirm whether seals have been hooked on commercial or recreational gear, or a combination of both. However, NMFS consultations completed under the ESA section 7 found the MHI federal bottomfish fishery and the MHI federal lobster trap fishery were not likely to adversely affect Hawaiian monk seals (NMFS 2008a, 2008b). Finally, the PBR level for monk seals is currently ''undetermined,'' and NMFS is unable to make a quantitative evaluation of incidental mortality and serious injury compared to PBR. Due to the fact that the PBR level for monk seals is undetermined and the hooking and entanglement rate with commercial gear cannot be reliably assessed, NMFS will retain the ''HI lobster trap'' and ''HI Main Hawaiian Islands deep sea bottomfish handline'' fisheries as Category III fisheries on the LOF until more information becomes available to determine whether reclassification is warranted.

Comments on the Hawaii Troll and Charter Vessel Fisheries

NMFS received 10 comment letters addressing the proposed reclassification of the Hawaii trolling and charter vessel fisheries, four of which supported the proposal and six of which did not support the proposal. Generally, the comments focused on the following issues: (1) Concern regarding the use and quality of anecdotal reports of marine mammal interactions in the fisheries; (2) NMFS' use of quantitative versus qualitative information; (3) NMFS' estimation of commercial fishing effort ''fishing on'' dolphins; (4) the frequency of marine mammal interactions in the fisheries; (5) the severity of injuries sustained by marine mammals; (6) the PBR level for Pantropical spotted dolphins; (7) bait depredation by other dolphin species in these fisheries; (8) support for better understanding fishery interactions in HI and prioritization of a fishery observer program to better inform management; (9) the burden to the State of HI for mailing marine mammal Authorization Certificates to Category II fishery participants; and (10) the potential for the fisheries' elevation to lead to increased illegal fishing. Below, NMFS summarizes each comment received on the 2012 proposed LOF related to the HI troll and charter vessel fisheries and issues one response following the collective comments.

Comment 16: Three individual commenters, the Council, and the State of HI assert that NMFS should not use anecdotal reports of hookings as evidence or support for management decisions, given their lack of verification and details, nor should they be used to extrapolate mortality and serious injury to the entire fleet. An individual commenter notes that the use of such anecdotal reports does not

constitute objective and thorough science, and the Council suggests that NMFS develop a standard in using anecdotal reports in rulemaking to require verification and ensure decisions are based on the best available science. Further, the author of the newspaper article NMFS considered (Rizutto, 2007) commented that NMFS should not rely on his newspaper article for purposes of elevating the fisheries, that the instance described in the article was based on a third-hand account, and that he reported on this one instance because he believed it to be a rare event.

Comment 17: Four commenters address NMFS' use of quantitative versus qualitative data in drawing conclusions regarding the frequency of fishery interactions with spotted dolphins. The Council states that NMFS did not provide an upper limit of estimated mortality and serious injury, so there was not sufficient information to establish that collective fishery impacts exceeds 10 percent of PBR (Tier 1 analysis). Three commenters note the lack of quantitative data on the frequency of marine mammal interactions in the fisheries, and pointed to MMPA implementing regulations that instruct NMFS to evaluate other factors to determine the level of interactions when quantitative information is not available. The NRDC notes that the regulations also allow NMFS to consider other evidence at its own discretion. These three commenters concluded that the available qualitative data indicate a strong likelihood of occasional interactions, and the Commission stated that, until quantitative data are available on marine mammal takes from observer or other programs, the fisheries should be Category II.

Comment 18: Six commenters provide information on patterns of fishing effort in these fisheries. The Council, the State of HI, and two individual commenters suggest that NMFS overestimated the level of commercial fishing effort ''fishing on'' dolphins; *i.e.*, where vessels congregate on and deploy lines in close proximity to dolphins. The Council and two individual commenters assert that the majority of participants in these fisheries do not target tunas associated with, or fish within spotted dolphin pods, and an individual commenter noted that those who do, fish ''in front of'' not ''on'' dolphins, and that fishing around dolphins is only known to occur in two locations off the Big Island and Oahu. The State of HI noted that many commercial vessels fish part-time, and much of the effort is seasonal when there is a run of tuna. The State of HI also commented that many of those vessels observed trolling around dolphins may be non-commercial. The Council expresses concern that NMFS' account of Dr. Robin Baird's sightings rate of vessels ''fishing on'' spotted dolphins is skewed to produce a high result.

Dr. Baird asserts that his estimate of the percentage of spotted dolphin groups that had fishing vessels present is negatively biased (*i.e.*, is likely more than the percentage NMFS cites in proposed rule). He states that beginning in 2008, his research group began avoiding clusters of fishing vessels in their surveys to reduce the likelihood of encountering spotted dolphin groups at rates higher than would be expected given their presence in the area. As such, he states that in the last three years, he has been more likely to encounter groups that do not have fishing vessels present. Dr. Baird commented that observations of troll fishing vessels included up to eight vessels actively targeting dolphin pods, with multiples lines trailing hooks being trolled through the dolphins repeatedly. The Natural Resources Defense Council (NRDC) notes that this often occurred for several hours, at speeds up to 10 knots. The NRDC states that the degree of targeted fishing effort alone suggests the likelihood of incidental mortality or serious injury is not ''remote.''

Comment 19: The Council, the State of HI, the NRDC, and two individual commenters address the frequency of incidental interactions with Pantropical spotted dolphins in the HI troll and charter vessel fisheries. The Council, the State of HI and two individuals suggest that fishery interactions with Pantropical spotted dolphins are a rare event, the frequency is lower than NMFS estimated, and these fishery interactions are therefore not a conservation concern. One individual commenter cites experience fishing with these methods and never having hooked a dolphin, that they are not drawn to the lures or bait, and having only heard of one hooked dolphin that was hooked in the tail and released alive. The State of HI provides license and trip report data that indicate infrequent (0.25 percent of trips annually) reporting of catch lost to dolphin predation, and suggested the frequency at which dolphins are seriously injured fall below these percentages. The State of HI also states that NMFS applied assumptions that likely resulted in an overestimate of projected take levels.

The NRDC and an individual commenter suggest that interactions or the risk of interactions are likely higher than NMFS estimated, or at least do not qualify as ''remote.'' Dr. Baird describes his conversations with four HI fishermen, two of whom reported they had hooked spotted dolphins, and noted that spotted dolphins feed on flying fish near the surface during the day, increasing the potential for interactions with fishers. Finally, the NRDC states that the degree of targeted fishing effort alone suggests that the likelihood of incidental mortality and serious injury is not ''remote,'' which is required for a Category III fishery.

Comment 20: The Council and one individual commenter disagree with NMFS' determination that dolphins interacting with the troll and charter fisheries likely suffer serious injuries. One individual commenter notes that the reported dolphin was hooked in the mouth, was treated gently and cut loose without suffering the stress of being brought close to the boat. The Council asserts that NMFS ignored anecdotal information about dolphins surviving and recovering from these interactions, and that not all hookings result in the removal of the animal from the population. The Council also notes that the dolphins' injuries described in the proposed rule cannot be attributed to fishing vessels, and scarring shows that animals can survive and recover from such incidents.

Comment 21: The NRDC, the HSUS, and two individual commenters address the Pantropical spotted dolphin's PBR level. One individual commenter states that the PBR for the affected Pantropical spotted dolphin stock is underestimated. One individual commenter asserts that the abundance survey, the basis for the abundance estimate, was not designed to assess the dolphin population being impacted, evidenced by the low number of spotted dolphin sightings and the high CV. However, Dr. Baird says that the CV for the abundance estimate (upon which PBR is based) is the fifth lowest of all 18 species for which abundance was estimated from the 2002 survey, reflecting low density in Hawaiian waters. Dr. Baird, the NRDC, and the HSUS state that NMFS' SAR indicates the stock may be split into multiple island-associated stocks in the future pursuant to new genetic studies, so PBR, especially for the population around the Big Island where the largest share of charter fishing occurs, is likely to be smaller than the current PBR for the single defined stock.

Comment 22: The Council comments that NMFS ignored the information in a newspaper article (Rizzuto, 2007) regarding other dolphin species (rough-toothed and bottlenose) depredating on bait in these fisheries. The Council claims that NMFS has made selective

and arbitrary use of anecdotal information.

Comment 23: The HSUS comments that they were pleased to see a proposal for better understanding fishery interactions in Hawaii where marine mammal stock structure, abundance, and fishery interactions have long been ignored or accorded a lower priority than appropriate, and notes that the reclassification allows for a targeted observer program, which will provide data to better inform management.

Comment 24: The State of HI is concerned that since NMFS does not possess a database of commercial fishermen in HI, the proposed elevation of the ''HI charter vessel'' and ''HI trolling, rod and reel'' fisheries would place a significant administrative burden on the State for mailings of the MMAP authorization certificate to the more than 2,000 state-registered fishers. Further, the State of HI notes that it continually receives new applications for licenses during the year; however, NMFS only issues MMAP certificates at the beginning of the calendar year.

Comment 25: The State of HI states that NMFS must consider the potential for fishermen who are now licensed in the ''HI charter vessel'' and ''HI trolling, rod and reel'' fisheries to refuse to renew their Commercial Marine Licenses because of the requirements associated with participating in a Category II fishery, and if they continue to fish, may market their catch illegally. The State of HI asserts that this would reduce reportings to the State's licensing and reporting system, which NMFS relies on to manage fisheries.

Comment 26: The Council is concerned that NMFS apparently applies an arbitrary standard in determining fishery classifications and requests NMFS standardize any inconsistent analysis and determinations across regions. The Council observes that the proposed 2012 LOF includes seven Category III troll fisheries in the Pacific and several other Category III fisheries in the Atlantic that presumably include troll fisheries; however, the only proposed elevation to Category II is for the HI troll fishery. The Council argues that if gear type, fishing techniques, and anecdotal reports are sufficient to elevate one fishery to Category II, then all other troll fisheries in the Pacific and Atlantic, by the method of analogy, should also be analyzed for similar elevation. Further, the Council argues that where data and anecdotal reports of interactions (*e.g.*, depredation) are available for other fisheries, those fisheries should also be evaluated to determine whether they meet the criteria for Category II.

Response: NMFS proposed to elevate the ''HI trolling, rod and reel'' and ''HI charter vessel'' fisheries based on a suite of information, including NMFS reports, Western Pacific Regional Fishery Management Council reports, input from staff in the Pacific Islands Regional Office's Sustainable Fisheries Division, reports to the Pacific SRG, the SARs, consideration of the fishing gear and techniques of the fishery and the documented risk that they present to marine mammals, anecdotal reports from researchers, including researcher observations and researcher's discussions with fishermen, and information from a newspaper article (Rizzuto, 2007) (see 76 FR at 37720–37721, June 28, 2011). NMFS clarifies that the Agency does not rely exclusively on anecdotal reports of marine mammal interactions to support reclassifications of fisheries, but rather considers anecdotal information when it has been sufficiently corroborated by other sources of information.

As a result of the proposal to elevate the ''HI trolling, rod and reel'' and ''HI charter vessel'' fisheries from Category III to Category II, NMFS received an abundance of information from the public. This information, which is summarized in the comments 16–26 above, provides NMFS with new information the Agency had not been aware of or considered when proposing to elevate these fisheries to Category II. In support of the proposed elevation, NMFS received evidence that may further corroborate the anecdotal reports of hookings reported by fishermen to researchers (comment 19), including direct observations and a videotape of troll and charter vessel operations in close proximity to spotted dolphins (information provided after the comment period had closed). At the same time, NMFS received multiple comments suggesting that elevation may not be warranted. First, multiple commenters provided information to suggest NMFS may have overestimated the distribution and level of commercial fishing effort ''fishing on'' dolphins (comment 16). Second, the State of HI provided license and trip report data that indicate infrequent reporting of catch lost to dolphin predation, which suggests the frequency at which dolphins are seriously injured may fall below the projected take estimates provided by NMFS in the proposed rule (comment 18). Third, the author of the newspaper article NMFS considered (Rizutto, 2007) commented that NMFS should not rely on his newspaper article for purposes of elevating the fisheries, that the instance described in the article was based on a third-hand account, and that he reported on this one instance because he believed it to be a rare event (comment 16).

Based on the information described in comments 16–26 and summarized in the previous paragraph, it is apparent that certain pieces of the new information seem to indicate a Category II classification is not warranted, while other pieces of new information seem to indicate a Category II classification is warranted. Therefore, NMFS needs additional time to consider and investigate the information provided by the public commenters to better understand the nature and level of interactions between these fisheries and Pantropical spotted dolphins. For this reason, NMFS is not elevating the ''HI trolling, rod and reel'' and ''HI charter vessel'' fisheries to Category II or adding Pantropical spotted dolphins to the list of species or stocks killed or injuries in these fisheries in this final rule. Instead, over the next year NMFS will continue to review the information received from the public, along with the information on which the initial proposed fishery elevations were based (see 76 FR at37720–37721, June 28, 2011), and will propose to elevate the ''HI trolling, rod and reel'' and ''HI charter vessel'' fisheries to Category II on the 2013 LOF, if warranted.

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

Comment 27: The Garden State Seafood Association submitted four questions regarding the spatial boundary NMFS uses to separate fisheries in the northeast from the mid-Atlantic, including: (1) What is the Agency's justification for the spatial boundary of 70° west long. separating the northeast and mid-Atlantic?; (2) What purpose does the clarification of the boundary serve?; (3) How does the spatial boundary impact the bycatch analysis and the estimates?; (4) If bycatch incidents are attributed to a directed fishery, what is the purpose of the spatial boundary?

Response: NMFS' justification originates from the review of the northeast Fishing Vessel Trip Report (VTR) data, as stated in the language for the proposed change. Spatial data from fishing effort reported on VTR's were used in conjunction with our current state of knowledge regarding ecosystem, habitat, spatial, and temporal characteristics associated with marine mammal stock distributions. This information in aggregate was used to define the Northeast and Mid-Atlantic regions for the purpose of estimating

bycatch of marine mammals in trawl gear. The clarification was made to provide more detail on the spatial boundary and report to the public that it is consistent with how scientists at the NEFSC define the fishery. The clarification of the spatial boundary will have no impact on the bycatch analyses as the NEFSC has been using the reported spatial boundary since 2006 when the Atlantic Trawl Gear Take Reduction Team was first convened. Bycatch incidents of marine mammals are not attributed to a directed fishery. Marine mammal bycatch rates are estimated by gear type operating within the defined spatial strata. The Northeast and Mid-Atlantic regions essentially perform as spatial strata that can be further stratified by temporal and/or environmental parameters that show strong correlation with bycatch events (Rossman, 2010).

Comment 28: In addition to providing the estimated number of vessels in a particular fishery in the annual LOF, which NMFS acknowledges is ''inflated,'' the Garden State Seafood Association asks why NMFS does not also provide the number of vessels reporting landings in a particular fishery per year, because it would be informative for the public to see the difference?

Response: After investigating the use of landings data as an indicator of active fishery participants, NMFS has determined that landings databases that include state fisheries do not always record unique values or permit information that would result in differentiating one fishery participant from another. This may have a significant impact on estimating the number of active vessels or permit holders, though it is not clear whether or not these numbers would represent inflations or deflations of actual effort. While the numbers provided in Table 2 may be inflated compared to actual effort, they do represent potential effort. NMFS feels this use is appropriate for the purposes of the List of Fisheries given that this information is used solely for descriptive purposes and not used in determining current or future management of fisheries, observer coverage designations, or bycatch rates.

Comment 29: The Commission recommends that NMFS work on its own and in collaboration with states to develop new, consistent methods for estimating fishing effort for several Southeast Atlantic, Mid-Atlantic, and New England fisheries because fisheries managers should have clear measures of effort for the fisheries they manage. The Commission understands, based on NMFS' responses to previous recommendations on this issue, that the newly proposed numbers of estimated vessels/participants in these fisheries are intended to reflect potential effort (given that not all permitted fishermen fish), and that ''a clear measure of effort for all state fisheries in the Northeast and Mid-Atlantic has not been determined due to the manner in which many state permits allow for the use of multiple gear types'' (75 FR 68478, June 28, 2011). However, although NMFS has tried to reassure the Commission that these great fluctuations in vessel/person numbers have no management or observer implications, the Commission remains concerned about the uncertainty conveyed by these numbers.

Response: As stated in the Final 2011 LOF, Table 2 represents a description of each fishery including the estimated number of persons/vessels active in the fishery. Currently, a clear measure of effort for all state fisheries has not been determined due to the way many state permits allow for the use of multiple gear types. Therefore, NMFS has determined that this portion of the table will be representative of current permit holders, state and federal, that have the potential to participate in a particular fishery. As stated in the proposed LOF, NMFS recognizes there may be disparity between permit holders listed and actual fishery effort; however, the numbers provided in the LOF are solely used for descriptive purposes and will not be used in determining future management of fisheries, observer coverage designations, or bycatch rates. Further, NMFS has communicated with the states regarding the need for consistent fishing effort data collection methods across states to better assess fisheries' effects on marine mammal stocks that have interstate distributions. NMFS will continue to communicate this need through TRT processes, LOF yearly inquiries, and the MMAP's integrated registration process.

Comment 30: The Commission concurs with NMFS' proposal to add Risso's dolphin (WNA stock) to the list of species or stocks incidentally killed or seriously injured in the Category II ''Mid-Atlantic bottom trawl'' fishery based on 15 Risso's dolphins observed killed in this fishery in 2010. The Commission states that this level of take is noteworthy, because although fishery-related mortality for this stock between 2004 and 2008 averaged 20 deaths or serious injuries in all fisheries per year, no deaths in this specific fishery were reported during that 5-year period. Therefore, the Commission also recommends NMFS further investigate any factors that may account for the notable recent increase in takes of Risso's dolphins in this fishery.

Response: NMFS agrees with the Commission's comment. There could be several factors related to the increase in observed bycatch of Risso's dolphins in the Mid-Atlantic region bottom trawl fishery. It is unclear whether an increase in observer coverage may have contributed to number of takes observed in 2010. The NEFSC intends to evaluate the Risso's dolphin bycatch events from 2010 and will reports its findings in the 2012 SAR.

Comment 31: The CBD applauds NMFS' proposal to add Risso's dolphin (WNA stock) to the list of species or stocks incidentally killed or injured in the Category II ''Mid-Atlantic bottom trawl'' fishery despite the 2010 SAR's failure to include any mortality after 2008 to Risso's dolphins; however, the CBD asserts that this fishery should be classified as Category I. The CBD notes that the fifteen dolphins killed in 2010 were those observed and the actual mortality should be estimated at several times that based on levels of observer coverage ranging from 0 to 13.3 percent. Therefore, CBD asserts that it is very likely that this multiplier causes mortality in this fishery to represent more than 50 percent of the stock's PBR of 124 (*i.e.,* if observer coverage were 10 percent, observed mortality should be multiplied by ten and actual mortality estimated at 150 dolphins, exceeding the PBR).

Response: For the 2012 LOF, a reclassification of the ''Mid-Atlantic bottom trawl'' fishery to a Category I is not warranted. 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 current timing of the LOF publication and availability of both fishery dependent and independent data (both needed to estimate total mortality) to scientists are not in sync making it difficult to fully evaluate total bycatch mortality of a given stock for annual updates to the LOF. Using the count of takes seen by fisheries observers is an approach that is historically consistent with documenting relative levels of interactions with commercial fisheries for the LOF. Total bycatch mortality for Risso's dolphins due to commercial fishery interactions is scheduled to be evaluated and reported in the 2012 SAR. NMFS will revisit the classification of the ''Mid-Atlantic bottom trawl'' fishery once the 2012 SAR is published.

Additionally, percent observer coverage is not an appropriate metric to use as a multiplier for evaluating the risk a particular fishery poses to a marine mammal stock. It is also not appropriate to arbitrarily select 10 percent coverage from values ranging from 0 to 13.3 percent. Observer coverage has been increasing in small increments in specific target fisheries within the ''Mid-Atlantic bottom trawl'' fishery in recent years. What is presently known is that all the reports of observed bycatch of Risso's dolphins in 2010 originated from the Mid-Atlantic region where observer coverage has averaged only three percent during the last 5 years (2005–2009; draft 2011 SAR).

Comment 32: The USFWS provides NMFS with a report and photos from the Puerto Rico Department of Natural and Environmental Resources briefly describing the capture of a manatee by seine gear in July 2009.

Response: NMFS thanks USFWS for the report regarding the manatee take. Based on Puerto Rico (PR) Fishing Regulations 6768 of February 11, 2004 Article 15, use of beach seines in Puerto Rican waters was prohibited at the time of the take. Because this take was illegal and the specifics of are unknown (*e.g.,* gear design, soak time, location specifics, *etc.*), NMFS is not including manatees on the list of species or stocks killed or injured by the Caribbean haul/beach seine fishery on the LOF, and the fishery will remain classified as Category III. However, NMFS recommends that the USFWS add this take to the SAR for the Antillean manatee. Furthermore, the PR Fishing Regulations 7949 of November 29, 2010, now allows the use of beach seines. NMFS will work with USFWS to ensure any future takes that occur in this fishery are considered in the future LOFs and SAR.

Comment 33: The Commission concurs with NMFS' proposal to list bottlenose dolphins (Northern NC estuarine system stock) as a stock subject to incidental killing or serious injury in the ''VA pound net'' fishery. The Commission further recommends that NMFS work with the State of VA to develop a formal, scientifically sound system for observing or otherwise monitoring marine mammal interactions in this fishery.

Response: NMFS agrees that developing and implementing a formal observer program for the VA pound net fishery is important, and NMFS is exploring mechanisms to accomplish this with the State of VA. Meanwhile, NMFS monitors marine mammal interactions with this fishery in two ways: (1) Monitoring through the NMFS Northeast Fishery Science Center and (2) evaluating stranding data collected by the Stranding Network since the late 1990s.

Comment 34: The Commission concurs with the addition of bottlenose dolphins (Gulf of Mexico bay, sound, and estuarine stock) to the list of species or stocks incidentally killed or injured by the ''Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel'' fishery and recommends NMFS elevate this fishery to Category II based on evidence of interactions from 38 dolphins between 2002–2009 in gear consistent with recreational hook and line gear. The Commission believes that even without a quantitative analysis of average annual mortality and serious injury or comparisons with PBR levels, NMFS has sufficient evidence to conclude that the fishery results in at least occasional takes of bottlenose dolphins and warrants a Category II listing.

Response: At this time, there are not sufficient data to elevate this fishery. Hook and line fishing gear is used by both individual recreational anglers and commercial passenger fishing vessels; thus, it is difficult to discern how many animals are taken incidental to the Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery and how many animals are taken by a similar recreational fishery. NMFS will continue analyzing all stranding information for future LOFs to determine appropriate classification for hook and line fishery interactions.

Comment 35: The Commission reiterated past concerns about the lack of information on many species and stocks of marine mammals in the Gulf of Mexico and recommends that NMFS work with the Commission to develop an effective long-term strategy for determining marine mammal stock structure and abundance, potential biological removal levels, and fisheries mortality and serious injury rates in the Gulf of Mexico. The Commission notes that in responding to these past recommendations, NMFS has consistently stated that collection of information about fishery interactions is a high priority and will occur if resources become available, also emphasizing the value of information gathered via fishermen self-reports and stranding networks. In its response to the Commission's letter on the proposed 2011 LOF, NMFS noted how, as a result of the BP/Deepwater Horizon MC252 oil spill response and restoration efforts, additional surveys and mark-recapture studies were underway for some bay, sound, and estuarine stocks, and that this work would provide updated abundance estimates and potential biological removal levels for some stocks. The Commission appreciates NMFS' expressed intention to expand its efforts and investments in these areas; however, the Commission also believes that these efforts and investments would benefit from a more comprehensive, aggressive, and innovative strategy.

Response: NMFS agrees that determining marine mammal stock structure and abundance, potential biological removal levels, and fisheries mortality and serious injury rates in the Gulf of Mexico are priorities. NMFS Southeast Fisheries Science Center (SEFSC) conducts all marine mammal stock assessments for the Southeast, which are provided annually in SARs and include information on stock structure and abundance, potential biological removal levels, and fisheries mortality and serious injury rates. While NMFS uses this and other information to classify fisheries on the LOF, NMFS does not determine this information on the annual LOF. Therefore, NMFS recommends the Commission continue to provide comments regarding enhanced stock assessments during the public comment period for the annual SARs.

Comment 36: The Blue Water Fishermen's Association (BWFA) recommends NMFS standardize methods for analyzing data and observer coverage in the Atlantic pelagic longline fishery. BWFA states that the Atlantic and Gulf of Mexico SARs maintain the use of data that result in a gross distortion of the impacts of the shrinking longline fleet, including estimates of total annual serious injury and mortality extrapolated from an imprecise ''pooling'' method, the problems with which are compounded by attempts to assess serious injury by studying observer comments and applying a percentage to all extrapolated estimates. Further, BWFA asserts that NMFS continues to use disparate methods and different values to calculate percentages of observer coverage for the pelagic longline fishery versus other fisheries, which presents a skewed picture of the true rate of observer coverage of fishing effort.

Response: NMFS responded to a similar comment on the 2006 LOF (71 FR 48802, August 22, 2006, comment/response 18). NMFS' SEFSC develops fishery observer programs and methods for analyzing related data, and reports this information in the annual SARs. While NMFS uses this and other information to classify fisheries on the

LOF, NMFS does not determine this information on the annual LOF. Therefore, NMFS recommends the BWFA provide comments regarding these methods during the public comment period for the annual SARs.

Comment 37: The BWFA hopes that NMFS will provide financial support through the establishment of specific grants to help continue research efforts for practical solutions to the problem of marine mammal depredation on hooked catches. The BWFA notes that with the current requirements to use corrodible circle hooks and to carry and use safe handling and release tools and techniques, along with BWFA's support for research efforts of the Consortium for Wildlife Bycatch Reduction in helping to expand the understanding of the nature of pilot whale interactions, this fishery is already leading the way toward alleviating its interactions with protected species.

Response: NMFS thanks BWFA for their support of research efforts to reduce marine mammal bycatch. While the LOF does not include any funding mechanisms to support research efforts, NMFS provides funding for such research via other sources. For example, NMFS provides funding through NC Sea Grant for cooperative research between academics and fishermen to better understand pilot whale interactions with the pelagic longline fishery as described in the Pelagic Longline Take Reduction Plan.

Comment 38: The BWFA reiterated past recommendations for NMFS to subdivide the Atlantic Ocean, Caribbean and Gulf of Mexico pelagic longline fisheries for swordfish, tuna and sharks into three regional fisheries, the Atlantic (north), Caribbean (south), and Gulf of Mexico, citing four arguments. First, BWFA states that subdividing the fishery would more accurately reflect the geographical differences in target species, scientific data on the stocks of marine mammals listed as interacting with the U.S. Atlantic pelagic longline gear, and would take into account NMFS's regulations that have permanently closed specific areas of the southeast Atlantic coast. Second, BWFA notes that the catch and effort information for U.S. pelagic longline gear is recorded in distinct geographical regions and NMFS takes effort by area into account when calculating estimates of interactions; therefore, separating these fisheries by fishing region would facilitate establishing a standardized process for monitoring effort, estimating serious injury and incidental mortality rates, and evaluating the effectiveness of reduction methods. Third, BWFA disagrees with past statements from NMFS that nearly all of the fishery participants move across the proposed boundaries, noting that the recent available effort data shows a very high percentage of the Gulf of Mexico vessels fish nowhere else, most of the vessels that fish north or south of the Georgia/Florida border (within the EEZ) do not travel north or south of their region, and a small number (<12) of Atlantic distant-water vessels customarily travel north and south in international waters beyond the U.S. EEZ. Lastly, BWFA asserts that when compared to NMFS's division of various Pacific and Alaska fisheries, including the AK gillnet fisheries, the pelagic longline fisheries in the Atlantic and the Gulf of Mexico are being unjustly and incorrectly grouped into one single fishery.

Response: NMFS responded to similar comments in the 2001, 2003, and 2006 LOFs (66 FR 42780, August 15, 2001, comment/response 16; 68 FR 41725, July 15, 2003, comment/response 29; 71 FR 48802, August 22, 2006, comment/response 16). NMFS designates fishery descriptions on the LOF so as to be consistent with the current management structure for the fishery under the Atlantic Highly Migratory Species (HMS) FMP. The pelagic longline fishery in the Atlantic is managed by NMFS as one fishery under the Atlantic HMSFMP encompassing all longline fishing effort targeting highly migratory species that may occur throughout the Atlantic Ocean, Caribbean, and Gulf of Mexico. The development of management measures to reduce serious injuries and mortalities of marine mammals in the longline fishery has focused primarily on those areas where interactions pose particular risk to marine mammals. However, as long as interactions continue to occur throughout the fishery, NMFS will maintain the current fishery designation on the LOF.

Comment 39: The Florida Fish and Wildlife Conservation Commission (FWC) agrees that the proposed LOF would not affect the land or water uses or natural resources of the coastal zone as specified under section 307 of the Coastal Zone Management Act. However, the FWC recommends that, should any changes be made to the proposed LOF before it is finalized, the decision by NMFS not to provide a consistency determination for this activity should be revisited. Further, the FWC would appreciate consultation prior to NMFS making a decision not to provide a consistency determination for future LOFs.

Response: In the future NMFS will consult with the State of FL when determining consistency determinations under CZMA for any LOF actions that may impact fisheries managed by the State.

Comment 40: The HSUS is supportive of the inclusion of bottlenose dolphins in the list of species or stocks that are killed or injured with a number of Atlantic gillnet, trawl and trap/pot fisheries utilizing gear types known to interact with bottlenose dolphins, whose evolving changes in stock structure may result in impacts from these fisheries occurring at levels that are greater than previously thought.

Response: NMFS acknowledges this comment. The proposed additions of bottlenose dolphins to the list of species or stocks that are killed or injured to a number of Atlantic gillnet, trawl and trap/pot fisheries are finalized in this final rule.

Comment 41: The FWC identifies some mischaracterizations in the description of the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot fishery,'' including: (1) The proposed rule is essentially correct that traps are the only gear used in the commercial portion of this fishery, but stone crab claws are also lawfully harvested by hand recreationally; (2) Trap specifications for stone crab traps may be found in FWC rule, Chapter 68B–13, FL Administrative Code (F.A.C), not FL statutes; (3) In addition to the requirement for buoys attached to commercial traps to be marked with an ''X,'' the trap owner's stone crab endorsement number must be marked in characters at least 2 inches high on each buoy and harvester's must attach a tag that corresponds to a valid FWC-issued trap certificate; and (4) Ch. 68B–13.009(3), F.A.C. includes trap marking requirements for recreational harvest, stating the buoy attached to each trap, except those fished from a dock, shall have a permanently affixed and legible ''R'' at least 2 inches high, and the harvester's name and address.

Response: NMFS thanks the FWC for providing this information. Based on information provided by FWC, NMFS has clarified the language characterizing the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' in this final LOF.

Comment 42: The Florida Keys Commercial Fishermen's Association (FKCFA) requests NMFS continue to classify the ''South Atlantic, Gulf of Mexico stone crab trap/pot'' fishery as Category III based on the real differences between this fishery and the ''Atlantic blue crab trap/pot'' fishery, questionable data, a substantial law enforcement presence in the areas fished, and the extremely low number of interactions in the past decade. First, the FKCFA notes

that the stone crab trap/pot fishery differs significantly from the blue crab trap/pot fishery in the methods the gear is fished, the location the gear is deployed, and how the gear may interact with marine mammals. Second, the FKCFA requests additional details about the stranding data used to propose the classification change. Third, the FKCFA notes that nearly 50 percent of stone crab trap/pot fishing takes place in the waters of the FL Keys and Monroe County where there have been no recorded deaths to dolphins associated with the stone crab trap/pot fishery, and where there is a tremendous presence from law enforcement, marine scientists, and charter/for-hire and recreational boaters who are likely to observe and report interactions.

Response: From 2002–2010 stranding data, NMFS confirmed that three bottlenose dolphin serious injuries and mortalities were a result of interactions with the stone crab fishery. The NMFS Southeast Regional Office gear analysis team analyzed the gear recovered on the stranded dolphins and confirmed the gear was from the stone crab fishery. Seven additional bottlenose dolphin serious injuries or mortalities were confirmed to result from interactions with trap/pot gear from a southeast trap/pot fishery. Although specific fishery attribution was not possible for the gear found on these seven dolphins, NMFS conducted a spatial and temporal analysis of the fishery and interactions and determined it is likely these dolphins were also entangled in stone crab gear. The three confirmed stone crab takes and seven additional possible takes by stone crab gear since 2002 provide reasonable evidence that the stone crab fishery by itself is responsible for the annual removal of between 1 and 50 percent of any stock's PBR and should be classified as a Category II fishery. Two of the three confirmed takes incidental to the stone crab fishery occurred in Biscayne Bay, Florida, within the range of the Biscayne Bay bottlenose dolphin stock, representing at least 4.4 percent of the Biscayne Bay bottlenose dolphin stock's total. NMFS classifies each fishery on the LOF based on the serious injury or mortality level in the entire fishery; therefore, regardless of the three serious injuries to dolphins from trap/pot gear reported in the FL Keys and Monroe County waters between 2002–2010 (gear was not analyzed by gear analysis team, but based on spatial temporal analysis stone crab gear is a possibility for all three cases), the stranding data from Biscayne Bay and by analogy to the ''Atlantic blue crab trap/pot'' fishery indicate a Category II classification of the fishery is warranted. Based on this information, NMFS has classified this fishery as Category II in this final rule.

Comment 43: The HSUS and the CBD support the elevation of the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery to a Category II fishery. However, the CBD asserts that given the small size and complex stock structure of Gulf of Mexico bottlenose dolphin stocks, the stone crab fishery should be categorized as a Category I fishery. The HSUS is also concerned that the growing understanding of the existence of resident populations of bottlenose dolphins in individual bays, sounds, and estuaries underscores the need to better inform management of fishery interactions with dolphins. Both the CBD and HSUS recommend that observer coverage is necessary to better monitor fisheries interaction effects on these small, distinct dolphin stocks.

Response: The stranding data analyses described in the proposed 2012 LOF indicates that the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery is not responsible for a PBR removal level of greater than 50 percent for any stock. The removal calculation of the two takes by stone crab gear was estimated to be at least 4.4 percent of the Biscayne Bay bottlenose dolphin stock's total. Therefore, based on the best available information and according to the definition of a Category I fishery (''annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level''), a Category I classification for the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' is not warranted. The fishery is classified as Category II in this final rule. NMFS will continue to monitor interactions with this fishery each year to determine if reclassification is warranted. Furthermore, NMFS agrees that a greater understanding of the operations of fishery interactions with dolphins is important to inform management. Observer coverage for fisheries in which historical data, anecdotal accounts, or stranding data indicate a high probability for serious injury or lethal interactions to marine mammal populations are a priority if funding becomes available. For example, in 2011 NMFS was able to support observer coverage for the Gulf of Mexico Menhaden fishery in order to help better understand the nature and scope of marine mammal interactions with this fishery.

Comment 44: The Commission concurs with NMFS' proposal to elevate the ''Southeastern Atlantic, Gulf of Mexico stone crab trap/pot'' fishery to Category II because it utilizes gear and techniques common with other fisheries that are known to entangle bottlenose dolphins. The Commission recognizes that while quantitative information on mortality and serious injury rates and PBR levels for 5 of the 7 stocks confirmed or plausibly seriously injured by this fishery are not available, the many similarities with the Category II ''Atlantic blue crab trap/pot'' fishery and information on dolphin stranding events warrant a Category II classification.

Response: NMFS acknowledges this comment. The ''Southeastern Atlantic, Gulf of Mexico stone crab trap/pot'' fishery is classified as Category II in this final rule.

Comments on Commercial Fisheries on the High Seas

Comment 45: The HLA disagrees with NMFS' proposal to add a number of ''unknown'' stocks to the list of species or stocks injured or killed in the ''HI deep-set (tuna target)'' and ''HI shallow-set (swordfish target)'' longline/set line fisheries, despite NMFS' acknowledging that the ''proposed addition of these unknown stocks is not due to additional observed takes…'' (76 FR 37716, June 28, 2011). The HLA asserts that the inclusion of species or stocks for which there has never been an observed interaction is arbitrary and capricious and violates the plain language of the MMPA, which states that NMFS include in the LOF ''a statement describing the marine mammal stocks interacting with'' a given fishery (MMPA section 118(c)). The HLA states that there is no room in this language for the inclusion of ''unknown'' marine mammal species or stocks that NMFS speculates may, but have not been observed to, interact with the fishery.

Response: The proposed additions of unknown stocks are for species that have been observed to have been taken by the HI-based deep-set and shallow-set longline fisheries on the high seas, but for which the stock identity could not be determined. For this fishery, the unknown stocks include stocks for Blainville's beaked whale, bottlenose dolphin, Pantropical spotted dolphin, Risso's dolphin, short-finned pilot whale, striped dolphin, Bryde's whale, and *Kogia spp. whale.* (Please refer to the proposed rule at 76 FR 37716, June 28, 2011, for more information.) NMFS' SARs for HI pelagic cetacean stocks note that the stocks' ranges extend into the high seas, but the full offshore ranges are unknown. For those animals taken by the longline fisheries on the high seas, it is unknown in most cases

whether the animals belong to the HI pelagic stocks, or whether the animals are from stocks beyond the (unknown) range of the HI pelagic stocks. This is particularly true for takes that occur far outside the U.S. EEZ. At this point, NMFS cannot assume that all takes are from HI pelagic stocks. Therefore, NMFS' inclusion of ''unknown'' stocks that are known to interact with the longline fisheries on the high seas merely acknowledges the uncertainty in stock identification.

Comment 46: The Commission concurs with NMFS' proposal to add several marine mammal stocks, absent information on stock identity and fisheries interactions, to the list of those subject to incidental killing or serious injury in the Category I ''Western Pacific pelagic fishery, I deep-set component'' and the Category II ''Western Pacific pelagic fishery, HI shallow-set component'' because such additions better reflect the state of information and need for caution in managing interactions between marine mammals and these high seas fisheries. Further, the Commission notes that these additions point to the need to work with industry and increase investment and initiatives to gather more information about high seas marine mammal stocks, including their boundaries and interactions with fisheries. Therefore, the Commission recommends that NMFS work with its international and industry partners to compile and analyze information about marine mammals on the high seas and their interactions with fisheries, so that the list of species incidentally killed or seriously injured in high seas fisheries can be refined in the near future.

Response: NMFS agrees that the addition of these ''unknown'' stocks reflects the lack of information on stock structure and stock identity for marine mammals on the high seas that interact with the U.S. longline fisheries. NMFS has and will continue to work with international and industry partners to gather information on marine mammal stocks and high seas fishery interactions to better understand the stocks and U.S. fisheries' impacts on them.

Comment 47: The Council argues that while additions of ''unknown stocks'' are made for the high seas ''Western Pacific pelagic'' fisheries, additions of ''unknown stocks'' are not made for other high seas fisheries, including the high seas ''Atlantic highly migratory species'' fishery that has ten different stocks of marine mammals known to be incidentally injured or killed.

Response: There is not significant evidence that ''unknown stocks'' are currently incidentally killed or injured in the ''Atlantic highly migratory species longline'' fishery; therefore, ''unknown'' stocks are not listed under this fishery in Table 3. For detailed information on why NMFS includes ''unknown'' stocks in on the list of species or stocks killed or injured in the high seas ''Pacific highly migratory species longline'' fisheries (HI deep-set and HI shallow-set), please see the response to comment 45 above.

For the majority of high seas fisheries, NMFS does not have data to create a list of which marine mammal species or stocks are killed or injured on the high seas. For fisheries that occur only on the high seas and are not extensions of fisheries operating in U.S. waters, the marine mammals species killed or injured in those fisheries are listed as ''undetermined'' in Table 3. For high seas fisheries that are extensions of a fishery operating in U.S. waters, but for which there are no data on takes on the high seas, NMFS includes an identical list of marine mammal species as are listed as killed or injured in the portion of the fishery operating in U.S. waters (minus exclusively coastal stocks). These fisheries are identified in Table 3 by a '' – '' after their names. For high seas fisheries that are extensions of a fishery operating in U.S. waters for which NMFS does have observed mortalities or injuries on the high seas, the species or stocked observed as killed or injured on the high seas are listed. These fisheries are identified in Table 3 by a ''+'' after their names.

Summary of Changes From the Proposed Rule

In this final rule, NMFS is not elevating the ''HI trolling, rod and reel'' or the ''HI charter vessel'' fisheries to Category II as proposed, instead these fisheries are retained as Category III. For additional information, see comments 16–26, and the associated comment response, under *''Comments on the Hawaii Troll and Charter Vessel Fisheries''* above.

In this final rule, NMFS is not adding Pantropical spotted dolphins (HI stock) to the list of species or stocks incidentally killed or injured in the ''HI trolling, rod and reel'' or ''HI charter vessel'' fisheries. For additional information, see comments 16–26, and the associated comment response, under ''Comments on the Hawaii Troll and Charter Vessel Fisheries'' above.

In this final rule, NMFS updates the fishery description for the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery to clarify the State of Florida's regulations for this fishery, based on comments received from the FL Fish and Wildlife Commission (see comment/response 41). The final fishery description is provided above under the section ''Fishery Descriptions.''

NMFS corrects a typographical error in the proposed rule, which stated the ''CA pelagic longline'' fishery occurs within the EEZ, when in fact this fishery has always occurred on the high seas, seaward of the EEZ. The ''CA pelagic longline'' fishery targets highly migratory species (HMS) and the use of longline gear to target HMS within the EEZ off of CA is prohibited by NOAA regulations under the Magnuson-Stevens Fishery Conservation and Management Act, as well as by State of CA.

Summary of Changes to the LOF for 2012

The following summarizes changes to the LOF for 2012 in fishery classification, fisheries listed in the LOF, the estimated number of vessels/participants in a particular fishery, and the species or stocks that are incidentally killed or injured in a particular fishery. The classifications and definitions of U.S. commercial fisheries for 2012 are identical to those provided in the LOF for 2011 with the changes discussed below.

Commercial Fisheries in the Pacific Ocean

Fishery Classification

The ''CA thresher shark/swordfish drift gillnet'' fishery is elevated from Category III to Category II.

Fishery Name and Organizational Changes and Clarifications

NMFS corrects a typographical error that appeared in the proposed 2012 LOF, which stated the ''CA pelagic longline'' fishery occurs within the EEZ, when in fact this fishery has always occurred on the high seas, seaward of the EEZ. The ''CA pelagic longline'' fishery targets highly migratory species (HMS) and the use of longline gear to target HMS within the EEZ off of CA is prohibited by NOAA regulations under the Magnuson-Stevens Fishery Conservation and Management Act, as well as by State of CA. This fishery is the same as the ''Pacific Highly Migratory Species'' longline fishery listed in Table 3. The error in the proposed 2012 LOF occurred when NMFS provided a correction to the 2011 LOF to ensure that this one fishery, although listed separately on Table 1 and Table 3 (the reasons for which are explained in the preamble under ''Are High Seas Fisheries Included on the LOF?''), was classified as Category III on

both tables and that marine mammal species injured or killed is the same on both tables.

Number of Vessels/Persons

The estimated numbers of persons/vessels participating in several HI fisheries are updated based on the most recent numbers of federal permits or state licenses for each fishery, as outlined below.

Category I: ''HI deep-set (tuna target) longline/set line'' from 127 to 124.

Category II: ''American Samoa longline'' from 60 to 26; ''HI shortline'' from 21 to 13; and ''HI trolling, rod and reel'' from 2,210 to 2,191.

Category III: ''HI inshore gillnet'' from 39 to 44; ''HI crab net'' from 8 to 5; ''HI Kona crab loop net'' from 41 to 46; ''HI opelu/akule net'' from 20 to 16; ''HI hukilau net'' from 36 to 27; ''HI lobster tangle net'' from 2 to 1; ''HI inshore purse seine'' from 8 to 5; ''HI throw net, cast net'' from 28 to 22; ''HI crab trap'' from 9 to 5; ''HI fish trap'' from 11 to 13; ''HI lobster trap'' from 3 to 1; ''HI shrimp trap'' from 1 to 2; ''HI kaka line'' 28 to 24; ''HI vertical longline'' from 18 to 10; ''HI aku boat, pole, and line'' from 6 to 2; ''HI inshore handline'' from 460 to 416; ''HI tuna handline'' from 531 to 445; ''HI handpick'' from 53 to 61; ''HI lobster diving'' from 36 to 39; ''HI spearfishing'' from 163 to 144; ''HI fish pond'' from N/A to 16; and ''HI Main Hawaiian Islands deep-sea bottomfish handline from 580 to 569.

List of Species or Stocks Incidentally Killed or Injured

Humpback whale (CA/OR/WA stock) is added to the list of species or stocks incidentally killed or injured in the ''CA thresher shark/swordfish drift gillnet'' fishery followed by the notation ''[1].''

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

Fishery Classification

The ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery is elevated from Category III to Category II followed by the notation ''[2].''

Addition of Fisheries

The ''RI floating trap'' fishery is added to the LOF as Category III.

Fishery Name and Organizational Changes and Clarifications

The spatial boundaries for the Category II ''Northeast bottom trawl,'' ''Northeast mid-water trawl,'' ''Mid-Atlantic bottom trawl,'' and ''Mid-Atlantic mid-water trawl'' fisheries are updated and the fishery definitions are updated to reflect this change.

Number of Vessels/Persons

The estimated number of vessels/persons participating in several New England, Mid-Atlantic, and South Atlantic fisheries are updated based on the most recent numbers of federal permits or state licenses for each fishery, as outlined below.

Category I: ''Mid-Atlantic gillnet'' from 5,495 to 6,402; ''Northeast sink gillnet'' from 7,712 to 3,828; and ''Northeast/Mid-Atlantic American lobster trap/pot'' from 12,489 to 11,767.

Category II: ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' from 4,453 to 1,282; ''Chesapeake Bay inshore gillnet'' from 1,167 to 3,328; ''Northeast anchored float gillnet'' from 662 to 414; ''Northeast drift gillnet'' from 608 to 414; ''Mid-Atlantic mid-water trawl'' from 546 to 669; ''Mid-Atlantic bottom trawl'' from 1,182 to 1,388; ''Northeast mid-water trawl (including pair trawl)'' from 953 to 887; ''Northeast bottom trawl'' from 1,635 to 2,584; Atlantic blue crab trap/pot from 6,479 to 10,008; ''Atlantic mixed species trap/pot'' from 1,912 to 3,526; ''Mid-Atlantic menhaden purse seine'' from 54 to 56; ''Mid-Atlantic haul/beach seine'' from 666 to 874; and ''VA pound net'' from 52 to 231.

Category III: ''FL spiny lobster trap/pot'' fishery from 2,145 to 1,268; ''Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge'' from 258 to > 230; ''Northeast, Mid-Atlantic bottom longline/hook & line'' from 1,183 to > 1,281; ''DE River inshore gillnet'' from 60 to unknown; ''Long Island Sound inshore gillnet'' from 20 to unknown; ''RI, southern MA (to Monomy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet'' from 32 to unknown; ''Gulf of Maine Atlantic herring purse seine'' from > 7 to > 6; ''U.S. Mid-Atlantic eel trap/pot'' from > 700 to unknown; and ''Atlantic shellfish bottom trawl'' from > 67 to > 86.

List of Species or Stocks Incidentally Killed or Injured

Killer whale (GMX oceanic stock), sperm whale (GMX oceanic stock), and Gervais beaked whale (GMX oceanic stock) are added to the list of species or stocks incidentally killed or injured in the Category I ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagic longline'' fishery.

Atlantic spotted dolphin (Northern GMX stock) stock name is updated to Atlantic spotted dolphin (GMX continental and oceanic) on the list as species or stocks incidentally killed or injured in the Category I ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagic longline'' fishery.

Bottlenose dolphin (GA coastal stock) and bottlenose dolphin (SC coastal stock) are combined on the list as species or stocks incidentally killed or injured in the Category II ''Southeast Atlantic gillnet'' fishery and renamed bottlenose dolphin (SC/GA coastal stock).

Bottlenose dolphin (Northern FL coastal stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''Southeastern U.S. Atlantic shark gillnet'' fishery.

Bottlenose dolphin (Northern GMX coastal stock) and bottlenose dolphin (GMX continental shelf stock) are added to the list of species or stocks incidentally killed or injured in the Category II ''Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl'' fishery.

Atlantic spotted dolphin (Northern GMX) is updated to Atlantic spotted dolphin (GMX continental and oceanic) on the list of species or stocks incidentally killed or injured in the Category II ''Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl'' fishery.

Bottlenose dolphin (GA coastal stock) and bottlenose dolphin (SC coastal stock) are combined on the list of species or stocks incidentally killed or injured in the Category II ''Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl'' fishery and renamed bottlenose dolphin (SC/GA coastal stock).

Bottlenose dolphin (GA coastal stock) and bottlenose dolphin (SC coastal stock) are combined on the list of species or stocks incidentally killed or injured in the Category II ''Atlantic blue crab trap/pot'' fishery and renamed the stock bottlenose dolphin (SC/GA coastal stock).

Bottlenose dolphin (Southern NC estuarine system stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''NC long haul seine'' fishery.

Bottlenose dolphin (Northern NC estuarine system stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''VA pound net'' fishery.

Bottlenose dolphin (Central FL coastal stock) is added to the list of species or stocks incidentally killed or injured in the Category III ''FL spiny lobster trap/pot'' fishery.

Bottlenose dolphin (Central FL coastal stock), bottlenose dolphin (Eastern GMX coastal stock), bottlenose dolphin (FL Bay stock), bottlenose dolphin (GMX bay, sound, estuarine stock, FL west coast portion), bottlenose dolphin (Indian River Lagoon estuarine system stock), bottlenose dolphin (Jacksonville estuarine system stock), and bottlenose dolphin (Northern GMX coastal stock) are added to the list of species or stocks

incidentally killed or injured in the Category II ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery.

Bottlenose dolphin (GMX continental shelf stock) is added to the list of species or stocks incidentally killed or injured in the Category III ''Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line'' fishery.

Bottlenose dolphin (GMX bay, sound, and estuarine stock) is added to the list of species or stocks incidentally killed or injured in the Category III ''Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel'' fishery.

Risso's dolphin (WNA stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''Mid-Atlantic bottom trawl'' fishery.

Harbor seal (WNA stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''Mid-Atlantic bottom trawl'' fishery.

Bottlenose dolphin (WNA offshore stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''Northeast bottom trawl'' fishery.

Gray seal (WNA stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''Northeast bottom trawl'' fishery.

Commercial Fisheries on the High Seas

Fishery Classification

The high seas ''Pacific highly migratory species drift gillnet'' fishery is elevated from Category III to Category II because the component of the fishery operating in U.S. waters is elevated in this final rule.

To correct an error in the 2011 LOF, the high seas ''Pacific highly migratory species longline'' fishery from is reclassified from Category II to Category III.

Removal of Fisheries

The Category II high seas ''Pacific highly migratory species trawl'' ''South Pacific albacore troll trawl'' fisheries are removed from the LOF.

Fishery Name and Organizational Changes and Clarifications

The name of the Category I high seas ''Western Pacific pelagic (deep-set component) longline'' fishery is changed to the ''Western Pacific pelagic (HI deep-set component) longline'' fishery.

The name of the Category II high seas ''Western Pacific pelagic (shallow-set component) longline'' fishery is changed to the ''Western Pacific pelagic (HI shallow-set component) longline'' fishery.

Number of Vessels/Persons

The estimated number of HSFCA permits is updated for several high seas fisheries for multiple gear types, as outlined below.

High seas ''Atlantic highly migratory species'' fishery for the following gear types: longline from 77 to 81; and handline/pole and line from 2 to 3.

High seas ''Pacific highly migratory species'' fishery for the following gear types: Pot from 7 to 3; longline from 75 to 85; handline/pole and line from 25 to 30; multipurpose from 7 to 5; purse seine from 8 to 7; and troll from 271 to 258.

High seas ''South Pacific albacore troll'' fishery for the following gear types: Pot from 5 to 3; and troll from 59 to 51.

High seas ''South Pacific tuna'' fishery for the following gear types: Longline from 8 to 11; and purse seine from 35 to 33.

High seas ''Western Pacific pelagic'' fishery for the following gear types: Deep-set longline from 127 to 124; pot from 7 to 3; handline/pole and line from 10 to 8; multipurpose from 5 to 4; trawl from 3 to 1; and troll from 40 to 32.

List of Species or Stocks Incidentally Killed or Injured

Humpback whale (CA/OR/WA stock) is added to the list of marine mammal stocks incidentally killed or injured in the high seas ''Pacific highly migratory species gillnet'' fishery.

Risso's dolphin (CA/OR/WA stock) is removed from the list of marine mammal stocks incidentally killed or injured in the high seas ''Pacific highly migratory species longline'' fishery.

Blainville's beaked whale (unknown stock), bottlenose dolphin (unknown stock), Pantropical spotted dolphin (unknown stock), Risso's dolphin (unknown stock), short-finned pilot whale (unknown stock), and striped dolphin (unknown stock) are added to the list of species or stocks killed or injured in the Category I high seas ''Western Pacific pelagic (HI deep-set component)'' fishery.

Bottlenose dolphin (unknown stock), Byrde's whale (unknown stock), *Kogia* spp. whale (unknown stock), Risso's dolphin (unknown stock), and striped dolphin (unknown stock) are added to the list of species or stocks killed or injured in the Category II high seas ''Western Pacific pelagic (HI shallow-set component)'' fishery.

List of Fisheries

The following tables set forth the 2012 list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. 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; and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels/persons participating 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, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels/persons in the fishery. NMFS acknowledges that, in some cases, these estimations may be inflations of actual effort, such as for many of the Mid-Atlantic and New England fisheries. However, in these cases, the numbers represent the potential effort for each fishery, given the multiple gear types several state permits may allow for. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Table 1 and 2 serve to provide a description of the fishery's potential effort (state and Federal). If NMFS is able to extract more accurate information on the gear types used by state permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on Table 1 or 2, NMFS refers the reader to contact the relevant regional office (contact information included above in **SUPPLEMENTARY INFORMATION**).

For high seas fisheries, Table 3 lists the number of currently valid HSFCA permits held. 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 on the potential effort in high seas fisheries at this time.

Tables 1, 2, and 3 also list the marine mammal species or stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, disentanglement network data, and MMAP reports. This list includes all species or stocks known

to be injured or killed in a given fishery, but also includes species or stocks for which there are anecdotal records of an injury or mortality. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.,* MMAP reports) may not be verified. In Tables 1 and 2, 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 that are 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 as Category II that have no recent documented injuries or mortalities of marine mammals, or fisheries that did not result in a serious injury or mortality rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear 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 (*i.e.,* 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). 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, and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately between Table 1 or 2 and Table 3, are considered the same fishery on either side of the EEZ boundary. NMFS has designated those fisheries in each table by a ''*'' after the fishery's name.

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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		
LONGLINE/SET LINE FISHERIES:		
HI deep-set (tuna target) longline/set line *^	124	Blainville's beaked whale, HI Bottlenose dolphin, HI Pelagic False killer whale, HI Insular[1] False killer whale, HI Pelagic[1] False killer whale, Palmyra Atoll Humpback whale, Central North Pacific Pantropical spotted dolphin, HI 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)	50	California sea lion, U.S. Harbor seal, CA Humpback whale, CA/OR/WA[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 (mesh size ≥3.5 in and <14 in)[2]	30	California sea lion, U.S. Long-beaked common dolphin, CA Short-beaked common dolphin, CA/OR/WA
CA thresher shark/swordfish drift gillnet (≥14 in mesh) *	45	California sea lion, U.S. Humpback whale, CA/OR/WA[1] 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
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 Kodiak salmon set gillnet	188	Harbor porpoise, GOA[1] Harbor seal, GOA Sea otter, Southwest AK Steller sea lion, Western U.S.
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 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]
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]
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	27	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
CA Dungeness crab pot	534	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
OR Dungeness crab pot	433	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
WA/OR/CA sablefish pot	309	Humpback whale, CA/OR/WA[1]
WA coastal Dungeness crab pot/trap	228	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
LONGLINE/SET LINE FISHERIES:		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
HI shallow-set (swordfish target) longline/ set line *^	28	Bottlenose dolphin, HI Pelagic[1] Bryde's whale, HI False killer whale, HI Pelagic Humpback whale, Central North Pacific Kogia sp. whale (Pygmy or dwarf sperm whale), HI Risso's dolphin, HI Striped dolphin, HI
American Samoa longline[2]	26	False killer whale, American Samoa Rough-toothed dolphin, American Samoa
HI shortline[2]	13	None documented
AK Bering Sea, Aleutian Islands Pacific cod longline	54	Killer whale, AK resident[1] Ribbon seal, AK Steller sea lion, Western U.S.
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	44	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, THROW NET AND TANGLE NET FISHERIES:		
AK Southeast salmon purse seine	415	None documented in the most recent 5 years of data

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
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
CA anchovy, mackerel, sardine purse seine	65	California sea lion, U.S. Harbor seal, CA
CA squid purse seine	80	Long-beaked common dolphin, CA Short-beaked common dolphin, CA/OR/WA
CA tuna purse seine *	10	None documented
WA/OR sardine purse seine	42	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
HI opelu/akule net	16	None documented
HI inshore purse seine	5	None documented
HI throw net, cast net	22	None documented
HI hukilau net	27	None documented
HI lobster tangle net	1	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA/OR smelt, herring dip net	119	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
MARINE AQUACULTURE FISHERIES:		
CA marine shellfish aquaculture	unknown	None documented
CA salmon enhancement rearing pen	>1	None documented
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented
OR salmon ranch	1	None documented
WA/OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries *	1,302 (102 AK)	None documented
AK salmon troll	2,045	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
HI trolling, rod and reel	2,191	None documented
Commonwealth of the Northern Mariana Islands tuna troll	88	None documented
Guam tuna troll	401	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

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK Gulf of Alaska sablefish longline	291	Sperm whale, North Pacific Steller sea lion, Eastern U.S.
AK halibut longline/set line (State and Federal waters)	2,521	Steller sea lion, Western U.S.
AK octopus/squid longline	2	None documented
AK State-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish)	1,448	None documented
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	None documented in the most recent 5 years of data
HI kaka line	24	None documented
HI vertical longline	10	None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	9	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	93	Harbor seal, Bering Sea Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands rockfish trawl	10	None documented
AK Gulf of Alaska flatfish trawl	41	None documented
AK Gulf of Alaska Pacific cod trawl	62	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	62	Fin whale, Northeast Pacific Northern elephant seal, North Pacific Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	34	None documented
AK food/bait herring trawl	4	None documented
AK miscellaneous finfish otter / beam trawl	317	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	32	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
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 shrimp trawl	300	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.
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/OR shrimp pot/trap	254	None documented
WA Puget Sound Dungeness crab pot/trap	249	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
HI crab trap	5	None documented
HI fish trap	13	None documented
HI lobster trap	1	Hawaiian monk seal
HI shrimp trap	2	None documented
HI crab net	5	None documented
HI Kona crab loop net	46	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline/hand troll and mechanical jig	445	None documented
AK North Pacific halibut handline/hand troll and mechanical jig	228	None documented
AK octopus/squid handline	0	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	200	None documented
HI aku boat, pole, and line	2	None documented
HI Main Hawaiian Islands deep-sea bottomfish handline	569	Hawaiian monk seal
HI inshore handline	416	None documented
HI tuna handline	445	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

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
WA herring brush weir	1	None documented
HI bullpen trap	4	None documented
BAIT PENS:		
WA/OR/CA bait pens	13	California sea lion, U.S.
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	0	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK Dungeness crab	2	None documented
AK herring spawn on kelp	266	None documented
AK urchin and other fish/shellfish	570	None documented
CA abalone	0	None documented
CA sea urchin	583	None documented
HI black coral diving	1	None documented
HI fish pond	16	None documented
HI handpick	61	None documented
HI lobster diving	39	None documented
HI spearfishing	144	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:		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
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; ^ The list of marine mammal species or stocks killed or injured in this fishery is identical to the list of species or stocks killed or injured in high seas component of the fishery, minus species or stocks have geographic ranges exclusively on the high seas. The species or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

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	6,402	Bottlenose dolphin, Northern Migratory coastal[1] Bottlenose dolphin, Southern Migratory coastal[1] Bottlenose dolphin, Northern NC estuarine system[1] Bottlenose dolphin, Southern NC estuarine system[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	3,828	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
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	11,767	Harbor seal, WNA Humpback whale, Gulf of Maine Minke whale, Canadian east coast North Atlantic right whale, WNA[1]

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline *	94	Atlantic spotted dolphin, GMX continental and oceanic 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 Gervais beaked whale, GMX oceanic Killer whale, GMX oceanic 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] Sperm whale, GMX oceanic
CATEGORY II		
GILLNET FISHERIES:		
Chesapeake Bay inshore gillnet[2]	3,328	None documented in the most recent 5 years of data
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	2,250	Bottlenose dolphin, Northern NC estuarine system[1] Bottlenose dolphin, Southern NC estuarine system[1]
Northeast anchored float gillnet[2]	414	Harbor seal, WNA Humpback whale, Gulf of Maine White-sided dolphin, WNA
Northeast drift gillnet[2]	414	None documented
Southeast Atlantic gillnet[2]	779	Bottlenose dolphin, Southern Migratory coastal Bottlenose dolphin, SC/GA coastal Bottlenose dolphin, Central FL coastal Bottlenose dolphin, Northern FL coastal
Southeastern U.S. Atlantic shark gillnet	30	Atlantic spotted dolphin, WNA Bottlenose dolphin, Central FL coastal[1] Bottlenose dolphin, Northern FL coastal North Atlantic right whale, WNA

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
TRAWL FISHERIES		
Mid-Atlantic mid-water trawl (including pair trawl)	669	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	1,388	Bottlenose dolphin, WNA offshore Common dolphin, WNA[1] Harbor seal, WNA Long-finned pilot whale, WNA[1] Risso's dolphin, WNA[1] Short-finned pilot whale, WNA[1] White-sided dolphin, WNA
Northeast mid-water trawl (including pair trawl)	887	Harbor seal, WNA Long-finned pilot whale, WNA[1] Short-finned pilot whale, WNA[1] White-sided dolphin, WNA
Northeast bottom trawl	2,584	Bottlenose dolphin, WNA offshore Common dolphin, WNA Gray seal, 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]
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	4,950	Atlantic spotted dolphin, GMX continental and oceanic Bottlenose dolphin, SC/GA coastal[1] Bottlenose dolphin, Eastern GMX coastal[1] Bottlenose dolphin, GMX continental shelf Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal[1] Bottlenose dolphin, GMX bay, sound, estuarine[1] West Indian manatee, FL
TRAP/POT FISHERIES:		
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot[2]	1,282	Bottlenose dolphin, Biscayne Bay estuarine Bottlenose dolphin, Central FL coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, FL Bay Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion) Bottlenose dolphin, Indian River Lagoon estuarine system Bottlenose dolphin, Jacksonville estuarine system Bottlenose dolphin, Northern GMX coastal

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
Atlantic mixed species trap/pot[2]	3,526	Fin whale, WNA Humpback whale, Gulf of Maine
Atlantic blue crab trap/pot	10,008	Bottlenose dolphin, Charleston estuarine system[1] Bottlenose dolphin, Indian River Lagoon estuarine system[1] Bottlenose dolphin, Jacksonville estuarine system[1] Bottlenose dolphin, SC/GA coastal[1] Bottlenose dolphin, Northern GA/Southern SC estuarine system[1] Bottlenose dolphin, Southern GA estuarine system[1] Bottlenose dolphin, Northern Migratory coastal[1] Bottlenose dolphin, Southern Migratory coastal[1] Bottlenose dolphin, Central FL coastal[1] Bottlenose dolphin, Northern FL coastal[1] Bottlenose dolphin, Northern NC estuarine system[1] Bottlenose dolphin, Southern NC estuarine system[1] West Indian manatee, FL[1]
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]	56	Bottlenose dolphin, Northern Migratory coastal Bottlenose dolphin, Southern Migratory coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	874	Bottlenose dolphin, Northern NC estuarine system[1] Bottlenose dolphin, Northern Migratory coastal[1] Bottlenose dolphin, Southern Migratory coastal[1]
NC long haul seine	372	Bottlenose dolphin, Southern NC estuarine system Bottlenose dolphin, Northern NC estuarine system[1]
STOP NET FISHERIES:		
NC roe mullet stop net	13	Bottlenose dolphin, Southern NC estuarine system[1]
POUND NET FISHERIES:		
VA pound net	231	Bottlenose dolphin, Northern NC estuarine system Bottlenose dolphin, Northern Migratory coastal[1] Bottlenose dolphin, Southern Migratory coastal[1]
CATEGORY III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
DE River inshore gillnet	unknown	None documented in the most recent 5 years of data
Long Island Sound inshore gillnet	unknown	None documented in the most recent 5 years of data
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet	unknown	None documented in the most recent 5 years of data
Southeast Atlantic inshore gillnet	unknown	None documented
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	>86	None documented
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, Northern GMX continental shelf
Gulf of Mexico mixed species trawl	20	None documented
GA cannonball jellyfish trawl	1	None documented
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	>6	Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	>2	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	>1,281	None documented in the most recent 5 years of data
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	>403	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	Bottlenose dolphin, 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 shark bottom longline/hook-and-line	<125	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX continental shelf
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
U.S. Atlantic, Gulf of Mexico trotline	unknown	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
FL spiny lobster trap/pot	1,268	Bottlenose dolphin, Biscayne Bay estuarine Bottlenose dolphin, Central FL coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, FL Bay estuarine
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
U.S. Mid-Atlantic eel trap/pot	unknown	None documented
STOP SEINE/WEIR/POUND NET/FLOATING TRAP FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	unknown	Gray seal, WNA 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)	unknown	Bottlenose dolphin, Northern NC estuarine system
RI floating trap	9	None documented
DREDGE FISHERIES:		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
Gulf of Maine mussel dredge	unknown	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	>230	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster dredge	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	unknown	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	None documented in the most recent 5 years of data
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	unknown	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, Biscayne Bay estuarine Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Indian River Lagoon estuarine system Bottlenose dolphin, Southern NC estuarine system

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; SC- South 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		
LONGLINE FISHERIES:		
Atlantic Highly Migratory Species * +	81	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 (HI Deep-set component) * ^+	124	Blainville's beaked whale, HI Blainville's beaked whale, unknown Bottlenose dolphin, HI Pelagic Bottlenose dolphin, unknown False killer whale, HI Pelagic False killer whale, unknown Humpback whale, Central North Pacific Pantropical spotted dolphin, HI Pantropical spotted dolphin, unknown Risso's dolphin, HI Risso's dolphin, unknown Short-finned pilot whale, HI Short-finned pilot whale, unknown Striped dolphin, HI Striped dolphin, unknown
Category II		
DRIFT GILLNET FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
Pacific Highly Migratory Species * ^	3	Long-beaked common dolphin, CA Humpback whale, CA/OR/WA 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
TRAWL FISHERIES:		
Atlantic Highly Migratory Species **	3	Undetermined
CCAMLR	0	Antarctic fur seal

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed or injured
Western Pacific Pelagic	1	Undetermined
PURSE SEINE FISHERIES:		
South Pacific Tuna Fisheries	33	Undetermined
Western Pacific Pelagic	3	Undetermined
POT VESSEL FISHERIES:		
Pacific Highly Migratory Species **	3	Undetermined
South Pacific Albacore Troll	3	Undetermined
Western Pacific Pelagic	3	Undetermined
LONGLINE FISHERIES:		
CCAMLR	0	None documented
South Pacific Albacore Troll	11	Undetermined
South Pacific Tuna Fisheries **	11	Undetermined
Western Pacific Pelagic (HI Shallow-set component) * ^+	28	Bottlenose dolphin, HI Pelagic Bottlenose dolphin, unknown Bryde's whale, HI Bryde's whale, unknown Humpback whale, Central North Pacific Kogia sp. whale (Pygmy or dwarf sperm whale), HI Kogia sp. whale (Pygmy or dwarf sperm whale), unknown Risso's dolphin, HI Risso's dolphin, unknown Striped dolphin, HI Striped dolphin, unknown
HANDLINE/POLE AND LINE FISHERIES:		
Atlantic Highly Migratory Species	3	Undetermined
Pacific Highly Migratory Species	30	Undetermined
South Pacific Albacore Troll	8	Undetermined
Western Pacific Pelagic	8	Undetermined
TROLL FISHERIES:		
Atlantic Highly Migratory Species	7	Undetermined
South Pacific Albacore Troll	51	Undetermined
South Pacific Tuna Fisheries **	3	Undetermined
Western Pacific Pelagic	32	Undetermined
LINERS NEI FISHERIES:		

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed or injured
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 **	5	Undetermined
South Pacific Albacore Troll	4	Undetermined
Western Pacific Pelagic	4	Undetermined
Category III		
LONGLINE FISHERIES:		
Pacific Highly Migratory Species * +	84	None documented in the most recent 5 years of data
PURSE SEINE FISHERIES		
Atlantic Highly Migratory Species *^	0	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
Pacific Highly Migratory Species * ^	7	None documented
TROLL FISHERIES:		
Pacific Highly Migratory Species *	258	None documented

List of Terms, Abbreviations, and Symbols Used in Table 3:
GMX- Gulf of Mexico; NEI - Not Elsewhere Identified; 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 stocks 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 or stocks killed or injured in this fishery is identical to the list of marine mammal species or stocks killed or injured in U.S. waters component of the fishery, minus species or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species or stocks 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 components of these 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* Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot^
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 Mid-Atlantic menhaden purse seine NC inshore gillnet NC long haul seine NC roe mullet stop net Southeast Atlantic gillnet Southeastern U.S. Atlantic shark gillnet Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot^ VA pound net
Harbor Porpoise Take Reduction Plan (HPTRP) - 50 CFR 229.33 (New England) 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 II CA 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)
False Killer Whale Take Reduction Team (FKWTRT)	Category I HI deep-set (tuna target) longline/set line Category II HI shallow-set (swordfish target) longline/set line

* Only applicable to the portion of the fishery operating in U.S. waters; ^ Only applicable to the portion of the fishery operating in the Atlantic Ocean.

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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 for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule. As a result, a final regulatory flexibility analysis is not required, and none was prepared.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the

registration of individuals 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 was no need to update the 2005 EA at that time. If NMFS takes a management action, for example, through the development of a TRP, NMFS would first prepare an environmental document, as required under NEPA, specific to that action. NMFS will next review the EA to determine if updates are necessary in 2014.

This final rule would not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this 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 would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

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

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Samuel D. Rauch III,

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

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