

OAR-2009-0142, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

- *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
- *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

**Instructions:** All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

**Docket:** The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Permits Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 947-4118, [petersen.alfred@epa.gov](mailto:petersen.alfred@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses the approval of AVAQMD Rule 444 and SCAQMD Rule 445. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in

subsequent action based on this proposed rule.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 14, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 090218194-9196-01]

RIN 0648-AX65

#### List of Fisheries for 2010

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

**ACTION:** Proposed rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) publishes its proposed List of Fisheries (LOF) for 2010, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2010 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

**DATES:** Comments must be received by August 10, 2009.

**ADDRESSES:** Send comments by any one of the following methods.

(1) Electronic Submissions: Submit all electronic comments through the

Federal eRulemaking portal: <http://www.regulations.gov> (follow instructions for submitting comments).

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

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Melissa Andersen, Office of Protected Resources, 301-713-2322; David Gouveia, Northeast Region, 978-281-9280; Anne Ney, Southeast Region, 727-551-5758; Elizabeth Petras, Southwest Region, 562-980-3238; Brent Norberg, Northwest Region, 206-526-6733; Bridget Mansfield, Alaska Region, 907-586-7642; Lisa Van Atta, Pacific Islands Region, 808-944-2257. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

#### **SUPPLEMENTARY INFORMATION:**

##### **Availability of Published Materials**

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

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

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

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

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

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

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI 96814–4700, Attn: Lisa Van Atta.

#### What is the List of Fisheries?

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

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

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

##### *Fishery Classification Criteria*

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the

PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

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

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

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

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

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

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

##### *Other Criteria That May Be Considered*

In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury of mortality is “occasional” by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species

and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2). Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published.

#### How Does NMFS Determine which Species 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, and fisher self-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 fishery management plan (FMP) or a take reduction plan (TRP)). NMFS will provide case-specific justification in the LOF for changes to the list of species or stocks incidentally killed or injured.

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

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

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

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

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

#### **Are High Seas Fisheries Included on the LOF?**

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Sea Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (e.g., trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of 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 do not necessarily represent additional fisheries that are not accounted for in Tables 1 and 2. Many fishers holding these permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Table 1 and 2.

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

#### **Are Treaty Tribal Fisheries Included on the LOF?**

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

During the public comment phase for the proposed 2009 LOF, NMFS received a comment requesting the LOF be amended to include tribal fisheries (73 FR 73039, December 1, 2008; comment/response 4). The commenter stated that because of the subsequent holding of the Ninth Circuit in *Anderson v. Evans*, 371 F.3d 475 (9th Cir. 2002) finding that the MMPA applies to the Makah application to the gray whale hunt, NMFS' 1995 conclusion exempting tribal fisheries from the LOF and the Section 118 authorization process may no longer be valid. NMFS responded in the final 2009 LOF that the Agency would consider the comment during the development of future proposed LOFs (73 FR 73039, December 1, 2008; comment/response 4).

NMFS is evaluating whether or not the 1995 conclusion to exempt tribal fisheries from the LOF should be changed due to *Anderson v. Evans*. At this time, NMFS is seeking public comment on whether or not to include treaty tribal fisheries on future LOFs during the public comment period for the proposed 2010 LOF.

#### **Am I Required to Register Under the MMPA?**

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

#### **How Do I Register?**

NMFS has integrated the MMPA registration process, the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials directly under the MMAP. In the Pacific Islands, Southwest, Northwest, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate; in the Northeast and Southeast Regions, NMFS will issue vessel or gear owners notification of registry and directions on obtaining an authorization certificate. The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or

for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries. Individuals fishing in Category I and II fisheries for which no state or Federal permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

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

All vessel or gear owners that participate in Pacific Islands, Southwest, Northwest, or Alaska regional fisheries will receive their authorization certificates and/or injury/mortality reporting forms via U.S. mail, or with their State or Federal license at the time of renewal. Vessel or gear owners participating in the Northeast and Southeast Regional Integrated Registration Program will receive their authorization certificates as follows:

1. Northeast Region vessel or gear owners participating in Category I or II fisheries for which a state or Federal permit is required may receive their authorization certificate and/or injury/mortality reporting form by contacting the Northeast Regional Office at 978-281-9328 or by visiting the Northeast Regional Office Web site ([http://www.nero.noaa.gov/prot\\_res/mmap/certificate.html](http://www.nero.noaa.gov/prot_res/mmap/certificate.html)) and following instructions for printing the necessary documents.

2. Southeast Region vessel or gear owners participating in Category I or II fisheries for which a Federal permit is required, as well as fisheries permitted by the states of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas will receive notice of registry and may receive their authorization certificate and/or injury/mortality reporting form by contacting the Southeast Regional Office at 727-551-5758 or by visiting the Southeast Regional Office Web site (<http://sero.nmfs.noaa.gov/pr/pr.htm>) and following instructions for printing the necessary documents.

#### **How Do I Renew My Registration Under the MMPA?**

Vessel or gear owners that participate in Pacific Islands, Southwest, or Alaska

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

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

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

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any 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](http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf). Reporting requirements and procedures can be found in 50 CFR 229.6.

#### **Am I Required to Take an Observer Aboard My Vessel?**

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard vessel(s) upon request. MMPA Section 118 states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. However, observer requirements will not be exempted for U.S. Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline vessels

operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)). Observer requirements can be found in 50 CFR 229.7.

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

Fishers participating in a Category I or II fishery are required to comply with any applicable TRP regulations. Table 4 in this proposed rule provides a list of fisheries affected by take reduction teams and plans. Take reduction plan regulations can be found at 50 CFR 229.30 through 229.35.

#### **Sources of Information Reviewed for the Proposed 2010 LOF**

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

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

The proposed LOF for 2010 was based, among other things, on information provided in the NEPA and ESA documents analyzing authorized high seas fisheries, and the final SARs for 1996 (63 FR 60, January 2, 1998), 2001 (67 FR 10671, March 8, 2002), 2002 (68 FR 17920, April 14, 2003), 2003 (69 FR 54262, September 8, 2004), 2004 (70 FR 35397, June 20, 2005), 2005 (71 FR 26340, May 4, 2006), 2006 (72 FR 12774, March 19, 2007), 2007 (73 FR 21111, April 18, 2008), and 2008 (74 FR 19530, April 29, 2009). The SARs are available at: <http://www.nmfs.noaa.gov/pr/sars/>.

## Fishery Descriptions

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

### *American Samoa Longline Fishery*

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

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

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

### *HI Shortline Fishery*

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

system in place to document potential marine mammal interactions in this fishery. However, there are anecdotal reports of interactions off the north side of Maui, but the species and extent of interactions are unknown.

### *CA Spiny Lobster Trap Fishery*

The Category II “CA spiny lobster trap” fishery operates in southern California, with the highest proportion of landings made into Santa Barbara. The fishery operates from the first Wednesday in October to the first Wednesday after March 15. The fishery tends to be most productive during the first two months, when gear is set close to shore in shallow water (15 fathoms or less). By the end of the season, traps are set in waters deeper than 50 fathoms. This is a limited access fishery with both transferable and non-transferable permits. An estimated 225 permits are in use each year. There is no restriction on the number of traps set, but most vessels set 100 to 500 traps per day. Traps are generally fished singularly and are required to have a buoy marker with the owner’s license number, followed by the letter “P” to signify that it is a spiny lobster trap. This estimated number of vessels/participants in this fishery is 225.

### **Summary of Changes to the LOF for 2010**

The following summarizes changes to the LOF for 2010 in fishery classification, fisheries listed in the LOF, the estimated number of vessels/participants in a particular fishery, and the species/stocks that are incidentally killed or seriously injured in a particular fishery. The classifications and definitions of U.S. commercial fisheries for 2010 are identical to those provided in the LOF for 2009 with the proposed changes discussed below. State abbreviations used in the following paragraphs include: AK (Alaska), CA (California), HI (Hawaii), MD (Maryland), NC (North Carolina), NJ (New Jersey), SC (South Carolina), and VA (Virginia).

### *Commercial Fisheries in the Pacific Ocean*

#### Fishery Classification

NMFS proposed to elevate the “American Samoa longline” fishery from Category III to Category II based on analogy with other Category I and II longline fisheries in the tropical/sub-tropical latitudes of the Pacific. The fishing gear and methods used to fish in the “American Samoa longline” fishery are similar to the Category I “HI deep-set (tuna target) longline/set line” and

the Category II “HI shallow-set (swordfish target) longline/set line” fisheries, both fisheries which frequently or occasionally seriously injure or kill marine mammals. The “American Samoa longline” fishery, although a Category III, has been observed since 2006 with an average of 7.2 percent coverage. There were three interactions between the “American Samoa longline” fishery and marine mammals in 2008, two false killer whales (stock unknown), one of which was a mortality, and one rough-tooth dolphin (stock unknown). These interactions will be analyzed by the Southwest Fisheries Science Center (SWFSC) during the development of the 2010 SARs to determine whether or not the surviving animals were injured or seriously injured during these interactions. The analysis may also enable NMFS to determine whether or not the false killer whales interacting with this fishery are from the HI stock which interacts with the “HI deep-set (tuna target) longline/set line” fishery, or if the animals belong to a separate stock associated with American Samoa. Although the abundance estimate and the PBR for the false killer whales are unknown, the population around American Samoa may be a relatively small, island-associated population, as has been documented around other Pacific Islands. When completed, the results of these analyses will be reported and addressed in future LOFs.

NMFS proposes to reclassify the “AK southeast salmon purse seine” fishery from Category II to Category III. The current Category II classification is based on one permit holder self-report of an incidental mortality of a humpback whale (Central North Pacific) in this fishery in 1996. There are no further self-reports, known entanglements, or anecdotal information of any humpback whales or other marine mammals injured or killed in this fishery since 1996. Though entanglements of humpbacks occur annually in Southeast Alaska, gear found on such animals in Southeast Alaska has never been identified as purse seine gear. While the “AK southeast salmon purse seine” fishery has never been observed, NMFS reasons that some additional information on incidental takes would have come to light over the thirteen years since the first report if there were a level of serious injury and mortality of concern in this fishery, either through strandings/entanglement network data or permit holder self-reports.

NMFS stated in a response to public comments in the final 2009 LOF that the agency would review sperm whale

(North Pacific) interactions in the Category III “Gulf of Alaska sablefish longline” fishery. The 2008 SAR reports three sperm whales were observed seriously injured in this fishery in 2006 (with 11.2 percent observer coverage), which extrapolates to 10 sperm whales from 2002–2006 (or an average annual serious injury or mortality level of two sperm whales/year). Analysis for more recent years’ data is not complete, and there is no calculated PBR for this stock. Therefore, no change to this fishery’s category is recommended at this time. NMFS will continue to review sperm whale interactions with this fishery and will revisit the classification of the fishery on future LOFs, if warranted, once the more recent years’ data are analyzed and reported.

NMFS proposes to classify the “CA spiny lobster trap” fishery (proposed to be split from the Category III “CA spiny lobster, coonstripe shrimp, rock crab, tanner crab pot or trap” fishery, proposed to be renamed the “CA coonstripe shrimp, rock crab, tanner crab pot or trap” fishery, in this proposed rule) as Category II based on serious injuries to humpback whales (CA/OR/WA). The NMFS Large Whale Disentanglement Network (LWDN) reported four humpback whale entanglement events off CA resulting in serious injury, with various types of fishing gear, in 2007. (Details on humpback whale entanglements on the west coast prior to 2007 can be found in the 2009 proposed LOF (73 FR 33760; June 13, 2008.)) The gear involved in a July 2007 entanglement event that caused a serious injury to a humpback whale was identified as lobster trap gear. The total annual rate of mortality and serious injury (Tier 1 analysis) of humpback whales (CA/OR/WA) in all commercial fisheries from 2002 through 2006 exceeds 10 percent of the PBR level for this stock (final 2008 SAR). This single serious injury of a humpback whale in lobster trap gear results in an average mortality and serious injury rate of 0.2 humpback whales/year (when averaged over 5 years), or 8 percent of the PBR (2.5). Therefore, Category II classification is warranted. NMFS acknowledges that entanglements reported to the LWDN likely represent a minimum number of interactions. There is no observer coverage in this fishery.

NMFS proposes to reclassify the “CA pelagic longline” fishery from Category II to Category III. This fishery includes the shallow-set longline fishery that previous to 2004 operated on the high seas with most vessels landing in CA. In 2004, this fishery was prohibited inside the EEZ under a regulation promulgated

under the ESA in order to protect loggerhead sea turtles. This fishery also includes a deep-set longline fishery that developed since 2005. The classification of this fishery as Category II was based upon analogy with other pelagic longline fisheries and an injury of a Risso’s dolphins (CA/OR/WA) in 2003. In addition, one mortality of an unidentified dolphin was observed in this fishery in 2003. The total annual fishery mortality and serious injury of Risso’s dolphins (CA/OR/WA) in all commercial fisheries (Tier 1 analysis) is less than 10 percent of the stock’s PBR (final 2008 SAR); therefore, Category III classification is warranted. NMFS has no information to indicate that the “CA pelagic longline” fishery interacts with other marine mammal species/stocks and observer coverage is high in this fishery (ranged from 12 percent to 50 percent from 2003–2005, and was 100 percent in 2006 and 2007).

#### Addition of Fisheries to the LOF

NMFS proposes to add the “CA spiny lobster trap” fishery Category II fishery (see the discussion in the previous section for details).

NMFS proposes to add the “HI shortline” fishery as Category II based on analogy with the Category I “HI deep-set (tuna-target) longline/set line” and Category II “HI shallow-set (swordfish-target) longline/set line” fisheries. NMFS recently became aware of the operation of this commercial fishery. NMFS proposes to classify the “HI shortline” fishery as Category II by analogy to the HI longline fisheries based on similarities between the gear used, areas fished, and species targeted in the three fisheries. NMFS has received anecdotal reports of interactions with marine mammals in this fishery; however, the species and extent of the interactions are unknown. For more information, see the description of this fishery in the “Fishery Descriptions” section of this proposed rule.

#### Fishery Name and Organizational Changes and Clarifications

NMFS proposes to rename the Category III “CA spiny lobster, coonstripe shrimp, rock crab, tanner crab pot or trap” fishery to the “CA coonstripe shrimp, rock crab, tanner crab pot or trap” fishery to more accurately reflect the target species of the fishery. As explained above, the spiny lobster portion of this fishery is proposed to be added to 2010 LOF as a separate Category II fishery. The estimated number of vessels/participants in the Category III “CA

coonstripe shrimp, rock crab, tanner crab pot or trap" fishery is 305.

#### List of Species That are Incidentally Killed or Injured

NMFS proposes to change the stock name for false killer whales incidentally killed/injured in the "HI deep-set (tuna-target) longline/set line" fishery from "HI" to "HI pelagic." The 2008 SARs separates the "HI" stock into the "HI insular" and "HI pelagic" stocks, stating that all of the false killer whale injuries and mortalities due to interactions with longline fisheries are considered to be from the "HI pelagic" stock (74 FR 19530, April 29, 2009).

NMFS proposes to add pantropical spotted dolphin (stock unknown) to the list of species/stocks incidentally killed/injured in the Category I "HI deep-set (tuna target) longline/set line" fishery based on a documented mortality in 2008. While analysis of the 2008 observer data will not be finalized until publication of the 2010 SARs, NMFS proposes to add the species at this time because a mortality does not need to be analyzed to determine the severity (as is necessary for an animal released after an interaction). The average observer coverage over the past five years was 22.7 percent.

NMFS proposes to remove spinner dolphin (HI) from the list of species/stocks incidentally killed/injured in the Category I "HI deep-set (tuna target) longline/set line" fishery because there have been no observed interactions in the past five years. The average observer coverage over the past five years was 22.7 percent.

NMFS proposes to remove pantropical spotted dolphin (stock unknown) from the list of species/stocks incidentally killed/injured in the Category II "HI shallow-set (swordfish target) longline/set line" fishery. There have been no observed interactions in the past five years and observer coverage is 100 percent.

NMFS indicated in the final 2009 LOF (73 FR 73032, December 1, 2008; comment response 15) that the agency would reexamine 2008 observer data which reported an interaction between the Category II "HI shallow-set (swordfish target) longline/set line" fishery and a false killer whale. NMFS is not proposing to add false killer whales to the list of species/stocks incidentally killed/injured in the "HI shallow-set (swordfish target) longline/set line" fishery at this time. As stated in the final 2009 LOF (comment response 15), the data presented in the annual SARs have an average of a two-year time delay because of the time needed to properly analyze the data and

complete the peer-review process. Therefore, this 2008 interaction will be analyzed by the SWFSC during the development of the 2010 SARs to determine whether or not the animal was injured or seriously injured during this interaction. If the SWFSC analysis reveals the animal was injured during the interaction, NMFS will add false killer whales to a future LOF at that time.

NMFS proposes to add false killer whale (stock unknown) to the list of species/stocks incidentally killed/injured in the "American Samoa longline" fishery (proposed to be elevated from Category III to Category II in this proposed rule) based on a mortality reported in 2008. As stated above during NMFS' justification for proposing to elevate this fishery to Category II, there were two reported interactions with false killer whales (stock unknown) (one interaction resulted in the animal's mortality and the other animal was released alive with the injury status not yet analyzed), and one with a rough-toothed dolphin (stock unknown) (also released alive with the injury status not yet analyzed). NMFS proposes to add false killer whale (stock unknown) to the list of species/stocks incidentally killed/injured because the mortality does not need to be analyzed further to determine the level of injury to the animal. However, NMFS is not proposing to add rough-toothed dolphin (stock unknown) to the list of species/stocks incidentally killed/injured until after the SWFSC completes the analysis of the interaction and determines whether or not the animal was injured during the interaction. If the analysis reveals that the animal was injured during this interaction, NMFS will add rough-toothed dolphin (stock unknown) to a future LOF at that time.

NMFS proposes to remove humpback whales (Central North Pacific) from the list of species/stocks incidentally killed or injured in the "AK southeast salmon purse seine" fishery (proposed to be reclassified from Category II to Category III in this proposed rule). There are no self-reports, known entanglements, or anecdotal information of any humpback whales or other marine mammals injured or killed in this fishery since 1996. This fishery has never been observed, but stranding and entanglement networks are active in the area.

NMFS proposes to change the stock name for Northern fur seals on the list of species/stocks incidentally killed or injured in the Category II "AK Bering Sea, Aleutian Islands flatfish trawl" fishery from "Eastern North Pacific" to "Eastern Pacific," to correct a

typographical error. This stock has been referred to as the "Eastern Pacific" stock since the 1998 SARs.

NMFS proposes to remove short-finned pilot whales (CA/OR/WA) from the list of species/stocks incidentally killed or injured in the Category II "CA squid purse seine" fishery. NMFS has reviewed the available information on the distribution and abundance of short finned pilot whales, along with observer records, self-reports from the fishers, and the SWR stranding data base, and has concluded that the likelihood of interactions between this fishery and short-finned pilot whales (CA/OR/WA) is extremely remote. Short-finned pilot whales were once commonly seen off the coast of CA, but have become quite rare in recent years (Barlow and Forney 2007). Observer coverage in the "CA squid purse seine" fishery began in 2004 with less than 10 percent observer coverage. In 2005 and 2006, observer coverage was approximately 2.0 percent and 1.3 percent, respectively.

NMFS proposes to add a superscript "1" after long-beaked common dolphins (CA) in the list of species/stocks incidentally killed or injured in the Category II "CA squid purse seine" fishery. This fishery was classified as a Category II based on the level of serious injury and mortality of short-finned pilot whales (CA/OR/WA), which NMFS proposes to remove from the list of species/stocks incidentally killed or injured in this proposed rule (see preceding paragraph). The "CA squid purse seine" fishery will remain a Category II fishery due to a serious injury with a suspected long-beaked common dolphin. As described in the final 2009 LOF (73 FR 73032, December 1, 2008) an unidentified common dolphin was observed entangled and seriously injured during an interaction with the squid purse seine fishery in 2006 in an area where long-beaked common dolphins (CA) are known to occur. Given the area in which the interaction occurred, the unidentified common dolphin could have been a short-beaked common dolphin (CA) or a long-beaked common dolphin (CA). Due to the paucity of the information on the interaction and the low level of observer coverage in this fishery, NMFS cannot eliminate the possibility that a long-beaked common dolphin was seriously injured during this event. The level of serious injury of long-beaked common dolphin in this fishery, when extrapolated from the level of observer coverage, results in a mean annual mortality and serious injury of approximately 29 animals, which is 30 percent of the stock's PBR (95) and consistent with Category II

classification. Observer coverage in the "CA squid purse seine" fishery began in 2004 with less than 10 percent observer coverage. In 2005 and 2006, observer coverage was approximately 2.0 percent and 1.3 percent, respectively.

NMFS proposes to add humpback whale (CA/OR/WA) and gray whale (Eastern North Pacific) to the list of species/stocks incidentally killed or injured in the "CA spiny lobster" fishery (proposed to be classified as Category II in this proposed rule), with a superscript "1" after humpback whales, indicating that takes of this stock are driving the classification of the fishery. As described above, a humpback whale was reported seriously injured due to an entanglement in spiny lobster trap gear in July 2007, resulting in an average annual serious injury and mortality level of 8 percent of the stock's PBR. Gray whales (Eastern North Pacific) have also been reported incidentally killed or injured in this fishery. NMFS has received multiple reports of gray whales entangled in trap/pot gear off CA, including a report from April 2000 of a dead gray whale stranded on a beach in Santa Barbara County entangled in spiny lobster trap gear. Interactions with gray whales are not driving the Category II classification of this fishery. Currently, total commercial fishery-related annual mortality levels less than 10 percent of the stock's PBR (final 2007 SAR); therefore, a Tier 2 evaluation is not necessary.

NMFS is requesting public comment and/or information on two large whale entanglement events in 2007. On May 10, 2007, a free-swimming humpback whale was reported seriously injured with pink monofilament gillnet draped on its body. The animal was first seen offshore of Dana Point and was seen again later the same day off Palos Verdes Bay Club, of Palos Verdes, CA. On April 2, 2007, a free-swimming gray whale was reported entangled in and seriously injured by small mesh blue/green monofilament gillnet. The animal was seen at Rocky Point, near Rancho Palos Verdes, CA. No other information is available on the sightings. Based upon the area and time of year that these animals were sighted, gear from either or both of the Category II "CA halibut/white seabass and other species set gillnet (3.5 in mesh)" or the "CA yellowtail, barracuda, and white seabass drift gillnet (mesh size  $\geq 3.5$  in and  $< 14$  in)" fisheries could have caused the entanglement events. As described in the proposed 2009 LOF (73 FR 33760, December 1, 2005), NMFS must consider which fisheries operate in the same time and area as an observed

entangled marine mammal. Both gillnet fisheries were active at the time and area when the humpback whale and gray whale were observed entangled in gillnet gear. The "CA halibut/white seabass and other species set gillnet ( $> 3.5$  in mesh)" fishery was observed only once between 2003 and 2007, with 17.8 percent coverage in 2007. The "CA yellowtail, barracuda, and white seabass drift gillnet (mesh size  $\geq 3.5$  in and  $< 14$  in)" fishery was observed twice between 2003 and 2007, with 10.4 percent and 11.0 percent coverage in 2003 and 2004, respectively. NMFS is continuing to review the available information on the types of gear used in each fishery, and the distribution of each fishery and large whales during the time of the entanglement events. NMFS is also specifically requesting available information on the gear characteristics of each fishery or the entanglement events reported above. NMFS may propose to add humpback whales (CA/OR/WA) and gray whales (Eastern North Pacific) to the list of species/stocks incidentally killed or injured in the Category II "CA halibut/white seabass and other species set gillnet (3.5 in mesh)" and/or "CA yellowtail, barracuda, and white seabass drift gillnet (mesh size  $\geq 3.5$  in and  $< 14$  in)" fisheries to the final 2010 LOF or a future LOF, if warranted.

NMFS proposes to remove CA sea lion (U.S.) from the list of species/stocks incidentally killed or injured in the "CA pelagic longline" fishery (proposed to be reclassified as Category III in this proposed rule). CA sea lions (U.S.) were included on the list of species/stocks incidentally killed or injured in this fishery based on logbook reports when the fishery was originally included on the LOF in 1996. There have been no reported interactions since that time. Observer coverage in this fishery ranged from 12 percent to 50 percent from 2003–2005, and was 100 percent in 2006 and 2007.

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

##### Fishery Name and Organizational Changes and Clarifications

NMFS proposes to replace the existing description of the Category I "Mid-Atlantic gillnet fishery from the final 2008 LOF (72 FR 66048; November 27, 2007) and changes to the description outlined in the final 2007 LOF (73 FR 73032; December 1, 2008) with the following updated language, to reflect multiple amendments, including changes in state regulations, over the past several years: "The Category I Mid-Atlantic gillnet fishery targets monkfish,

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

NMFS proposes to replace the existing description of the Category II "Mid-Atlantic haul/beach seine" fishery from the final 2008 LOF (72 FR 66048; November 27, 2007) and changes to the description outlined in the final 2007 LOF (73 FR 73032; December 1, 2008) with the following updated language, to reflect multiple amendments, including changes in state regulations, over the past several years: "The Category II Mid-Atlantic haul/beach seine fishery targets striped bass, mullet, spot, weakfish, sea trout, bluefish, kingfish, and harvestfish using seines with one end secured (e.g., swipe nets and long seines) and seines secured at both ends or those anchored to the beach and hauled up on the



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

#### Number of Vessels/Persons

In past LOFs, the number of state participants for several northeast and mid-Atlantic fisheries was unknown and therefore the estimations for the number of vessels/persons participating in these fisheries were based solely on available federal information. This year NMFS has included available state permit information as well as federal permit information for the following northeast and mid-Atlantic fishery estimates. In some cases the addition of

the state dataset has caused the fishery participation estimates to increase significantly compared to past LOFs. It should be noted that this may provide an artificial representation of fishery participation trends and may only reflect the addition of the new state dataset, not actual increases in the number of fishery participants.

NMFS proposes to update the estimated number of vessels or persons in the Category I "Mid-Atlantic gillnet" fishery from >370 to 7,596.

NMFS proposes to update the estimated number of vessels or persons in the Category I "Northeast sink gillnet" fishery from 341 to >6,455.

NMFS proposes to update the estimated number of vessels or persons in the Category II "Atlantic mixed species trap/pot" fishery from unknown to >429.

NMFS proposes to update the estimated number of vessels or persons in the Category II "Mid-Atlantic menhaden purse seine" fishery from 22 to 34.

NMFS proposes to update the estimated number of vessels or persons in the Category II "Mid-Atlantic haul/beach seine" fishery from 25 to >221.

NMFS proposes to update the estimated number of vessels or persons in the Category II "Mid Atlantic mid-water trawl" fishery from 620 to 400.

NMFS proposes to update the estimated number of vessels or persons in the Category II "Northeast bottom trawl" fishery from 1052 to 1,600.

NMFS proposes to update the estimated number of vessels or persons in the Category II "Northeast mid-water trawl" fishery from 17 to 1,000.

NMFS proposes to update the estimated number of vessels or persons in the Category II "VA pound net" fishery from 187 to 62.

NMFS proposes to update the estimated number of vessels or persons in the Category III "Gulf of Maine Atlantic herring purse seine" fishery from 30 to <10.

#### List of Species That are Incidentally Killed or Injured

NMFS proposes to add the harbor porpoise (Gulf of Maine/Bay of Fundy (GME/BF)) to the list of marine mammal species/stocks incidentally killed or injured in the Category II "Northeast bottom trawl fishery" because of mortalities reported in the final 2008 SARs. NMFS removed this stock from the list of species/stocks incidentally killed or injured in this fishery on the final 2009 LOF (73 FR 73032; December 1, 2008) based on information from past LOFs indicating this listing represented a typographical error persisting since

the final 2005 LOF (71 FR 247; January 4, 2006). New information reported in the final 2008 SAR indicates there have been several incidental mortalities of harbor porpoises (GME/BF) in the Northeast bottom trawl between 2003 and 2008. These observed takes have included one fresh dead harbor porpoise taken in 2003, four in 2005, and one in 2006. Estimates have not been generated or reported in the SARs for the percentage of the stock's PBR (PBR=610) seriously injured or killed in this fishery (final 2008 SARs). Based on this newly available data, NMFS proposes to relist the harbor porpoise (GME/BF) under species/stocks incidentally injured or killed in the "Northeast bottom trawl" fishery. Estimated observer coverage (measured in trips) for the "Northeast bottom trawl" fishery during the period 1994–2006 was 0.4, 1.1, 0.2, 0.2, 0.1, 0.3, 1, 1, 3, 4, 5, 12 and 6 percent, respectively (final 2008 SARs).

NMFS proposes to remove fin whales (Western North Atlantic (WNA)) from the list of species/stocks incidentally killed or injured in the Category I "Northeast/Mid-Atlantic American lobster trap/pot" fishery. Fin whales were added to the LOF in 1997 based on an animal that was thought to have been entangled in lobster gear. However, subsequent analysis revealed the interaction was with hagfish pot gear, but the LOF was never updated to reflect this analysis. A fin whale has never been reported incidentally killed or injured in Northeast/Mid-Atlantic American lobster trap/pot gear. Additionally, this fishery does not have observer coverage, although it should be noted that initial encounters between large whales and fishing gear are rarely observed.

NMFS proposes to remove the superscript "1" after humpback whale (Gulf of Maine) and minke whale (Canadian east coast) in the Category I "Northeast/Mid-Atlantic American lobster trap/pot" fishery because serious injury and mortality of these stocks are not driving the Category I classification of this fishery. Annual mortality and serious injury of humpback whales in all lobster fisheries is 0.2 animals (PBR 1.1), or 18 percent of the stock's PBR (final 2008 SAR). Annual mortality and serious injury of minke whales in all lobster fisheries is 0.4 animals (PBR=19), or 2 percent of the stock's PBR (final 2008 SAR). The level of annual mortality and serious injury of humpback and minke whales in the "Northeast/Mid-Atlantic American lobster trap/pot" fishery is unknown at this time, but is likely less than 50 percent of the stocks' PBRs. It is important to note that the date sighted

and location provided in the SAR is not necessarily when or where the large whale serious injury or mortality occurred. The NMFS Northeast Regional Office (NERO) is currently working on a review of large whale entanglement events where gear type was identified and the location where the gear was set was known, to support the ALWTRP and to update the LOF tables. Once this review is complete, NMFS may propose changes to a future LOF, if warranted. There is no observer coverage in this fishery.

NMFS proposes to leave the superscript "1" after North Atlantic right whale (WNA) in the Category I "Northeast/Mid-Atlantic American lobster trap/pot" fishery because annual mortality and serious injury of right whales in all lobster fisheries is 0.2 animals (PBR=0) which is greater than fifty percent of the stock's PBR (final 2008 SAR). The level of annual mortality and serious injury of right whales in the "Northeast/Mid-Atlantic American lobster trap/pot" fishery is unknown at this time, but is likely more than 50 percent of the stock's PBR. It is important to note that the date sighted and location provided in the SAR is not necessarily when or where the large whale serious injury or mortality occurred. The NMFS NERO is currently working on a review of large whale entanglement events where gear type was identified and the location where the gear was set was known, to support the ALWTRP and to update the LOF tables. Once this review is complete, NMFS may propose changes to a future LOF, if warranted. There is no observer coverage in this fishery.

NMFS proposes to remove the superscript "1" after minke whales (Canadian east coast), humpback whales (Gulf of Maine), and North Atlantic right whales (WNA) from the list of species/stocks incidentally killed/injured in the Category I "Northeast sink gillnet" fishery because serious injury and mortality of these species/stocks are not driving the Category I classification of this fishery. No serious injury or mortality of minke whales in gillnet fisheries were reported from 2001–2006 (final 2008 SARs). The annual mortality and serious injury for humpback whales (Gulf of Maine) in all gillnet fisheries is 0.2 animals (PBR of 1.1), or 18 percent of the stock's PBR (final 2008 SAR). The level of annual mortality and serious injury of humpback whales in the "Northeast sink gillnet" fishery is unknown at this time, but is likely less than 50 percent of the stock's PBR. It is important to note that the date sighted and location provided in the SAR is not necessarily when or where the large

whale serious injury or mortality occurred. The final 2008 SARs report one mortality of a right whale in the most recent five years (2001–2006). This mortality of a right whale calf was the result of entanglement and injury to the whale by gillnet gear in the Southeast U.S. Restricted Area (as described under the ALWTRP, 50 CFR 229.32), where two gillnet fisheries traditionally operate: the Category II "Southeast Atlantic gillnet" fishery and the Category II "Southeastern U.S. Atlantic shark gillnet" fishery. However, NMFS was unable to determine which specific gillnet fishery was responsible for the interaction (for more information see comment/response 23 in the final 2006 LOF; 71 FR 48802, August 22, 2006). NMFS proposed to retain humpback whales, North Atlantic right whales, and minke whales on the list of species/stocks incidentally killed or injured given that they have been known to interact with or become entangled in gillnet gear, though not resulting in serious injury or mortality. The NMFS NERO is currently working on a review of large whale entanglement events where gear type was identified and the location where the gear was set was known, to support the ALWTRP and to update the LOF tables. Once this review is complete, NMFS may propose changes for this fishery in a future LOF, if warranted. Observer coverage in the "Northeast sink gillnet" fishery from 2001 to 2006 was between 2 percent and 7 percent (final 2008 SAR).

NMFS proposes to remove the superscript "1" after harbor porpoise (GME/BF) and humpback whale (Gulf of Maine) in the Category I "Mid-Atlantic gillnet" fishery because serious injury and mortality of these stocks are not driving the Category I classification of this fishery. Annual mortality and serious injury of harbor porpoises in this fishery is 299 animals (PBR=610), or 49 percent of the stock's PBR (final 2008 SAR). The annual mortality and serious injury of humpback whales in all gillnet fisheries is 0.2 animals (PBR of 1.1), or 18 percent of the stock's PBR (final 2008 SAR). The level of annual mortality and serious injury of humpback whales in the "Mid-Atlantic gillnet" fishery is unknown at this time, but is likely less than 50 percent of the stock's PBR. It is important to note that the date sighted and location provided in the SAR is not necessarily when or where the large whale serious injury or mortality occurred. The NMFS NERO is currently working on a review of large whale entanglement events where gear type was identified and the location where the gear was set was known, to

support the ALWTRP and to update the LOF tables. Once this review is complete, NMFS may propose changes to a future LOF, if warranted. Observer coverage in this fishery between 2001 and 2006 was between 1 percent and 3 percent (final 2008 SAR).

NMFS proposes to remove pygmy sperm whales (WNA) from the list of species/stocks incidentally killed or injured in the Category I "Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline" fishery because there have been no injuries or mortalities reported in the last five years (final 2008 SARs). Observer coverage in this fishery from 2000–2006 was between 4 percent and 7 percent, with coverage often greater than 10 percent in some areas and seasons (final 2008 SARs).

#### *Commercial Fisheries on the High Seas* Removal of Fisheries

As stated in the preamble under "How Does NMFS Authorize U.S. Vessels to Participate in High Seas Fisheries?," HSFCA permits exist that were obtained prior to 2004 for fisheries that are no longer authorized by the HSFCA, but for which the 5-year permit is still valid. These are included on the LOF as "unspecified" and these fisheries will be removed from the LOF once those permits have expired. For the 2010 LOF, all unspecified fisheries for all gear types are removed, except for trawl gear. Four trawl gear permits remain for an unspecified fishery.

#### Number of HSFCA Permits

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

NMFS proposes to update the estimated number of HSFCA permits in the High Seas Atlantic highly migratory species fishery for the following gear types: longline, from 75 to 72; trawl, from 3 to 2; handline/pole-and-line from 2 to 1; and troll, from 5 to 7.

NMFS proposes to update the estimated number of HSFCA permits in the High Seas Pacific highly migratory species fishery for the following gear types: drift gillnet, from 5 to 4; trawl, from 14 to 3; purse seine, from 5 to 8; pot, from 8 to 7; longline, from 56 to 62; handline/pole and line, from 18 to 22;

liners not elsewhere identified (NEI), from 3 to 1; multipurpose vessels, from 9 to 7; and troll, from 222 to 249.

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

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

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

#### List of Species That are Incidentally Killed or Injured

NMFS proposes to change the stock name for false killer whales incidentally killed/injured in the “High Seas Western Pacific Pelagic (Deep-set component)” fishery from “HI” to “HI pelagic.” This fishery is an extension of the “HI deep-set (tuna target) longline/set line” fishery operating in U.S. waters. Since this fishery remains the same and many marine mammals species are found on either side of the EEZ boundary, the list of species/stocks incidentally killed or injured in the high seas component of the fishery is identical to the list of species/stocks killed or injured in the component operating in U.S. waters. The 2008 SARs separates the “HI” stock into the “HI insular” and “HI pelagic” stocks, stating that all of the false killer whale injuries and mortalities due to interactions with longline fisheries are considered to be from the “HI pelagic” stock (74 FR 19530, April 29, 2009).

NMFS proposes to add pantropical spotted dolphin (stock unknown) to the list of species/stocks incidentally killed/injured in the Category II “High Seas Western Pacific Pelagic (Deep-set component)” fishery. This fishery is an extension of the “HI deep-set (tuna target) longline/set line” fishery operating in U.S. waters. Since this fishery remains the same and many marine mammals species are found on either side of the EEZ boundary, the list of species/stocks incidentally killed or injured in the high seas component of the fishery is identical to the list of species/stocks killed or injured in the component operating in U.S. waters.

There was one observed mortality of a pantropical spotted dolphin (stock unknown) in the “HI deep-set (tuna target) longline/set line” fishery in 2008 (as described above). The average observer coverage in the “HI deep-set (tuna target) longline/set line” fishery over the past five years was 22.7 percent.

NMFS proposes to remove spinner dolphin (HI) from the list of species/stocks incidentally killed/injured in the Category II “High Seas Western Pacific Pelagic (Deep-set component)” fishery. This fishery is an extension of the “HI deep-set (tuna target) longline/set line” fishery component operating in U.S. waters. Since this fishery remains the same and many marine mammals species found on either side of the EEZ boundary, the list of species/stocks incidentally killed or injured in the high seas component of the fishery is identical to the list of species/stocks killed or injured in the U.S. waters component. There have been no observed interactions with spinner dolphins (HI) in the “HI deep-set (tuna target) longline/set line” fishery over the past five years (as described above). The average observer coverage in the “HI deep-set (tuna target) longline/set line” fishery over the past five years was 22.7 percent.

NMFS proposes to remove pantropical spotted dolphin (stock unknown) from the list of species/stocks incidentally killed/injured in the Category II “High Seas Western Pacific Pelagic (Shallow-set component)” fishery. This fishery is an extension of the “HI shallow-set (swordfish target) longline/set line” fishery operating in U.S. waters. Since this fishery remains the same and many marine mammals species found on either side of the EEZ boundary, the list of species/stocks incidentally killed or injured in the high seas component of the fishery is identical to the list of species/stocks killed or injured in the component operating in U.S. waters. There have been no observed interactions with pantropical spotted dolphins (stock unknown) in the “HI shallow-set (swordfish target) longline/set line” fishery over the past five years (as described above), with observer coverage at 100 percent.

#### List of Fisheries

The following tables set forth the proposed list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. In Tables 1 and 2, the estimated number of vessels/participants in fisheries operating within U.S. waters is expressed in terms of the number of

active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the most recent LOF is used. For high seas fisheries, Table 3 lists the number of currently valid HSFCA permits held by fishers. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data at this time.

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

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

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

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; Table 3 lists commercial fisheries on the High Seas; Table 4 lists

fisheries affected by Take Reduction  
Plans or Teams.

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
CATEGORY I		
<i>GILLNET FISHERIES:</i>		
CA/OR thresher shark/swordfish drift gillnet ( $\geq 14$ in mesh) *	85	California sea lion, U.S. Long-beaked common dolphin, CA Northern elephant seal, CA breeding Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA <sup>1</sup>
<i>LONGLINE/SET LINE FISHERIES:</i>		
HI deep-set (tuna target) longline/set line *	129	Blainville's beaked whale, HI Bottlenose dolphin, HI False killer whale, HI pelagic <sup>1</sup> Humpback whale, Central North Pacific Pantropical spotted dolphin, stock unknown Risso's dolphin, HI Short-finned pilot whale, HI Striped dolphin, HI
CATEGORY II		
<i>GILLNET FISHERIES:</i>		
CA halibut/white seabass and other species set gillnet ( $> 3.5$ in mesh)	58	California sea lion, U.S. <sup>1</sup> Harbor seal, CA <sup>1</sup> Long-beaked common dolphin, CA Northern elephant seal, CA breeding Sea otter, CA Short-beaked common dolphin, CA/OR/WA
CA yellowtail, barracuda, and white seabass drift gillnet fishery (mesh size $\geq 3.5$ in and $< 14$ in)	24	California sea lion, U.S. Long-beaked common dolphin, CA <sup>1</sup> Short-beaked common dolphin, CA/OR/WA
AK Bristol Bay salmon drift gillnet <sup>2</sup>	1,862	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Spotted seal, AK Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet <sup>2</sup>	983	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Spotted seal, AK
AK Cook Inlet salmon set gillnet	738	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Humpback whale, Central North Pacific <sup>1</sup> Steller sea lion, Western U.S.

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK Cook Inlet salmon drift gillnet	571	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA <sup>1</sup> Harbor seal, GOA Steller sea lion, Western U.S.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA <sup>1</sup> Harbor seal, GOA Sea otter, Southwest AK Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet <sup>2</sup>	162	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet <sup>2</sup>	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 <sup>1</sup> 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. <sup>1</sup>
AK Southeast salmon drift gillnet	476	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific <sup>1</sup> Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet <sup>2</sup>	166	Gray whale, Eastern North Pacific Harbor seal, Southeast AK Humpback whale, Central North Pacific (Southeast AK)
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 <sup>1</sup> Harbor seal, WA inland
<i>PURSE SEINE FISHERIES:</i>		
AK Cook Inlet salmon purse seine	82	Humpback whale, Central North Pacific <sup>1</sup>
AK Kodiak salmon purse seine	370	Humpback whale, Central North Pacific <sup>1</sup>
CA anchovy, mackerel, sardine purse seine	63	Bottlenose dolphin, CA/OR/WA offshore <sup>1</sup> California sea lion, U.S. Harbor seal, CA
CA squid purse seine	64	Long-beaked common dolphin, CA <sup>1</sup> Short-beaked common dolphin, CA/OR/WA
CA tuna purse seine <sup>2</sup>	10	None documented
<i>TRAWL FISHERIES:</i>		
AK Bering Sea, Aleutian Islands flatfish trawl	34	Bearded seal, AK Harbor porpoise, Bering Sea Harbor seal, Bering Sea Killer whale, AK resident <sup>1</sup> Northern fur seal, Eastern Pacific Spotted seal, AK Steller sea lion, Western U.S. <sup>1</sup> Walrus, AK

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK Bering Sea, Aleutian Islands pollock trawl	95	Dall's porpoise, AK Harbor seal, AK Humpback whale, Central North Pacific <sup>1</sup> Humpback whale, Western North Pacific <sup>1</sup> Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient <sup>1</sup> Minke whale, AK Ribbon seal, AK Spotted seal, AK Steller sea lion, Western U.S. <sup>1</sup>
<i>LONGLINE/SET LINE FISHERIES:</i>		
HI shallow-set (swordfish target) longline/ set line *	28	Bottlenose dolphin, stock unknown Bryde's whale, stock unknown Humpback whale, Central North Pacific <sup>1</sup> Risso's dolphin, stock unknown Sperm whale, stock unknown
American Samoa longline <sup>2</sup>	60	False killer whale, stock unknown
HI shortline <sup>2</sup>	11	None documented
AK Bering Sea, Aleutian Islands Pacific cod longline	54	Killer whale, AK resident <sup>1</sup> Ribbon seal, AK Steller sea lion, Western U.S.
<i>POT, RING NET, AND TRAP FISHERIES:</i>		
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific <sup>1</sup> Humpback whale, Western North Pacific <sup>1</sup>
CA spot prawn pot	29	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA <sup>1</sup>
CA Dungeness crab pot <sup>2</sup>	625	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA
OR Dungeness crab pot	433	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA <sup>1</sup>
WA/OR/CA sablefish pot	155	Humpback whale, CA/OR/WA <sup>1</sup>
CA spiny lobster	225	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA <sup>1</sup>
CATEGORY III		
<i>GILLNET FISHERIES:</i>		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	824	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Harbor seal, GOA Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	986	None documented
CA set gillnet (mesh size <3.5 in)	304	None documented
HI inshore gillnet	5	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA/OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
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
<i>PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:</i>		
AK Southeast salmon purse seine	415	None documented in recent years
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	0	None documented
AK octopus/squid purse seine	0	None documented
AK roe herring and food/bait herring beach seine	4	None documented
AK roe herring and food/bait herring purse seine	361	None documented
AK salmon beach seine	31	None documented
AK salmon purse seine (excluding salmon purse seine fisheries listed as Category II)	936	Harbor seal, GOA
WA/OR sardine purse seine	42	None documented
HI Kona crab loop net	42	None documented
HI opelu/akule net	12	None documented
HI inshore purse seine	23	None documented
HI throw net, cast net	14	None documented
WA (all species) beach seine or drag seine	235	None documented
WA/OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
<i>DIP NET FISHERIES:</i>		
CA squid dip net	115	None documented
WA/OR smelt, herring dip net	119	None documented
<i>MARINE AQUACULTURE FISHERIES:</i>		
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
<i>TROLL FISHERIES:</i>		
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

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK salmon troll	2,045	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	88	None documented
Guam tuna troll	401	None documented
HI trolling, rod and reel	1,321	None documented
<i>LONGLINE/SET LINE FISHERIES:</i>		
AK Bering Sea, Aleutian Islands Greenland turbot longline	29	Killer whale, AK resident
AK Bering Sea, Aleutian Islands rockfish longline	0	None documented
AK Bering Sea, Aleutian Islands sablefish longline	28	None documented
AK Gulf of Alaska halibut longline	1,302	None documented
AK Gulf of Alaska Pacific cod longline	440	None documented
AK Gulf of Alaska rockfish longline	0	None documented
AK Gulf of Alaska sablefish longline	291	Sperm whale, North Pacific Steller sea lion, Eastern U.S.
AK halibut longline/set line (State and Federal waters)	2,521	Steller sea lion, Western U.S.
AK octopus/squid longline	2	None documented
AK State-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish)	1,448	None documented
WA/OR/CA groundfish, bottomfish longline/set line	367	None documented
WA/OR North Pacific halibut longline/set line	350	None documented
CA pelagic longline	6	Risso's dolphin, CA/OR/WA
<i>TRAWL FISHERIES:</i>		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	9	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	93	Harbor seal, Bering Sea Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands rockfish trawl	10	None documented
AK Gulf of Alaska flatfish trawl	41	None documented
AK Gulf of Alaska Pacific cod trawl	62	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	62	Fin whale, Northeast Pacific Northern elephant seal, North Pacific Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	34	None documented
AK food/bait herring trawl	4	None documented
AK miscellaneous finfish otter or beam trawl	317	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	32	None documented
AK State-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented



TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
CA halibut bottom trawl	53	None documented
WA/OR/CA groundfish trawl	160–180	California sea lion, U.S. Dall's porpoise, CA/OR/WA Harbor seal, OR/WA coast Northern fur seal, Eastern Pacific Pacific white-sided dolphin, CA/OR/WA Steller sea lion, Eastern U.S.
WA/OR/CA shrimp trawl	300	None documented
<i>POT, RING NET, AND TRAP FISHERIES:</i>		
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
OR/CA hagfish pot or trap	54	None documented
WA Dungeness crab pot	288	Gray whale, Eastern North Pacific
WA/OR shrimp pot/trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	0	Hawaiian monk seal
HI shrimp trap	5	None documented
<i>HANDLINE AND JIG FISHERIES:</i>		
AK miscellaneous finfish handline/hand troll and mechanical jig	445	None documented
AK North Pacific halibut handline/hand troll and mechanical jig	228	None documented
AK octopus/squid handline	0	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	200	None documented
HI aku boat, pole, and line	4	None documented

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
HI Main Hawaiian Islands, Northwestern Hawaiian Islands deep sea bottomfish	300	Hawaiian monk seal
HI inshore handline	307	None documented
HI tuna handline	298	None documented
WA groundfish, bottomfish jig	679	None documented
Western Pacific squid jig	6	None documented
<i>HARPOON FISHERIES:</i>		
CA swordfish harpoon	30	None documented
<i>POUND NET/WEIR FISHERIES:</i>		
AK herring spawn on kelp pound net	415	None documented
AK Southeast herring roe/food/bait pound net	6	None documented
WA herring brush weir	1	None documented
<i>BAIT PENS:</i>		
WA/OR/CA bait pens	13	California sea lion, U.S.
<i>DREDGE FISHERIES:</i>		
Coastwide scallop dredge	108 (12 AK)	None documented
<i>DIVE, HAND/MECHANICAL COLLECTION FISHERIES:</i>		
AK abalone	0	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	2	None documented
AK herring spawn on kelp	266	None documented
AK urchin and other fish/shellfish	570	None documented
CA abalone	0	None documented
CA sea urchin	583	None documented
HI black coral diving	1	None documented
HI fish pond	N/A	None documented
HI handpick	37	None documented
HI lobster diving	19	None documented
HI squidding, spear	91	None documented
WA/CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
<i>COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:</i>		

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ 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
<i>LIVE FINFISH/SHELLFISH FISHERIES:</i>		
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; <sup>1</sup> 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; <sup>2</sup> Fishery classified by analogy; \* Fishery has an associated high seas component listed in Table 3.

TABLE 2—LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
CATEGORY I		
<i>GILLNET FISHERIES:</i>		
Mid-Atlantic gillnet	7,596	Bottlenose dolphin, WNA coastal <sup>1</sup> 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	>6,455	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF <sup>1</sup> 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
<i>LONGLINE FISHERIES:</i>		

TABLE 2—LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—  
Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline *	94	Atlantic spotted dolphin, Northern GMX Atlantic spotted dolphin, WNA Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, Northern GMX continental shelf Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA <sup>1</sup> 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 <sup>1</sup>
<i>TRAP/POT FISHERIES:</i>		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Harbor seal, WNA Humpback whale, Gulf of Maine Minke whale, Canadian east coast North Atlantic right whale, WNA <sup>1</sup>
CATEGORY II		
<i>GILLNET FISHERIES:</i>		
Chesapeake Bay inshore gillnet <sup>2</sup>	45	None documented in recent years
Gulf of Mexico gillnet <sup>2</sup>	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
NC inshore gillnet	94	Bottlenose dolphin, WNA coastal <sup>1</sup>
Northeast anchored float gillnet <sup>2</sup>	133	Harbor seal, WNA Humpback whale, Gulf of Maine White-sided dolphin, WNA
Northeast drift gillnet <sup>2</sup>	unknown	None documented
Southeast Atlantic gillnet <sup>2</sup>	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	30	Atlantic spotted dolphin, WNA Bottlenose dolphin, WNA coastal <sup>1</sup> North Atlantic right whale, WNA
<i>TRAWL FISHERIES:</i>		
Mid-Atlantic mid-water trawl (including pair trawl)	400	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 <sup>1</sup>
Mid-Atlantic bottom trawl	>1,000	Common dolphin, WNA <sup>1</sup> Long-finned pilot whale, WNA <sup>1</sup> Short-finned pilot whale, WNA <sup>1</sup> White-sided dolphin, WNA
Mid-Atlantic flynet <sup>2</sup>	21	None documented

TABLE 2—LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—  
Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
Northeast mid-water trawl (including pair trawl)	1,000	Harbor seal, WNA Long-finned pilot whale, WNA <sup>1</sup> Short-finned pilot whale, WNA <sup>1</sup> White-sided dolphin, WNA
Northeast bottom trawl	1,600	Common dolphin, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA <sup>1</sup>
<i>TRAP/POT FISHERIES:</i>		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal <sup>1</sup> West Indian manatee, FL <sup>1</sup>
Atlantic mixed species trap/pot <sup>2</sup>	>429	Fin whale, WNA Humpback whale, Gulf of Maine
<i>PURSE SEINE FISHERIES:</i>		
Gulf of Mexico menhaden purse seine	40–42	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal <sup>1</sup> Bottlenose dolphin, Western GMX coastal <sup>1</sup>
Mid-Atlantic menhaden purse seine <sup>2</sup>	34	Bottlenose dolphin, WNA coastal
<i>HAUL/BEACH SEINE FISHERIES:</i>		
Mid-Atlantic haul/beach seine	>221	Bottlenose dolphin, WNA coastal <sup>1</sup>
NC long haul seine	33	Bottlenose dolphin, WNA coastal <sup>1</sup>
<i>STOP NET FISHERIES:</i>		
NC roe mullet stop net	13	Bottlenose dolphin, WNA coastal <sup>1</sup>
<i>POUND NET FISHERIES:</i>		
VA pound net	62	Bottlenose dolphin, WNA coastal <sup>1</sup>
CATEGORY III		
<i>GILLNET FISHERIES:</i>		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
DE River inshore gillnet	60	None documented in recent years
Long Island Sound inshore gillnet	20	None documented in recent years
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet	32	None documented in recent years
Southeast Atlantic inshore gillnet	unknown	None documented
<i>TRAWL FISHERIES:</i>		
Atlantic shellfish bottom trawl	972	None documented

TABLE 2—LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian manatee, FL
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
<i>MARINE AQUACULTURE FISHERIES:</i>		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
<i>PURSE SEINE FISHERIES:</i>		
Gulf of Maine Atlantic herring purse seine	<10	Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
FL West Coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
U.S. Atlantic tuna purse seine *	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
<i>LOONGLINE/HOOK-AND-LINE FISHERIES:</i>		
Northeast/Mid-Atlantic bottom longline/hook-and-line	46	None documented in recent years
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	Humpback whale, Gulf of Maine
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-group-er and other reef fish bottom longline/hook-and-line	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	<125	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX continental shelf
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
U.S. Atlantic, Gulf of Mexico trotline	unknown	None documented
<i>TRAP/POT FISHERIES</i>		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
FL spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, WNA coastal
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented

TABLE 2—LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—  
Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	Bottlenose dolphin, WNA coastal
U.S. Mid-Atlantic eel trap/pot	>700	None documented
<i>STOP SEINE/WEIR/POUND NET FISHERIES:</i>		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	Gray seal, Northwest North Atlantic Harbor porpoise, GME/BF Harbor seal, WNA Minke whale, Canadian East Coast White-sided dolphin, WNA
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net)	751	None documented
<i>DREDGE FISHERIES:</i>		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
<i>HAUL/BEACH SEINE FISHERIES:</i>		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic haul/beach seine	25	None documented
<i>DIVE, HAND/MECHANICAL COLLECTION FISHERIES:</i>		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net	unknown	None documented
<i>COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:</i>		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel	4,000	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, WNA coastal

List of Abbreviations and Symbols Used in Table 2: DE - Delaware; FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; MA - Massachusetts; NC - North Carolina; VA - Virginia; WNA - Western North Atlantic; <sup>1</sup> 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; <sup>2</sup> Fishery classified by analogy; \* Fishery has an associated high seas component listed in Table 3.

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

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed/injured
<b>Category I</b>		
<u>DRIFT GILLNET FISHERIES:</u>		
Pacific Highly Migratory Species * ^	4	Long-beaked common dolphin, CA Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA
<u>LOONGLINE FISHERIES:</u>		
Atlantic Highly Migratory Species * +	72	Atlantic spotted dolphin, WNA Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA Mesoplodon beaked whale, WNA Pygmy sperm whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA
Western Pacific Pelagic (Deep-set component) * ^	129	Blainville's beaked whale, HI Bottlenose dolphin, HI False killer whale, HI pelagic Humpback whale, Central North Pacific Pantropical spotted dolphin, stock unknown Risso's dolphin, HI Short-finned pilot whale, HI Striped dolphin, HI
<b>Category II</b>		
<u>DRIFT GILLNET FISHERIES:</u>		
Atlantic Highly Migratory Species	1	Undetermined
<u>TRAWL FISHERIES:</u>		
Atlantic Highly Migratory Species **	2	Undetermined
Pacific Highly Migratory Species **	3	Undetermined
CCAMLR	0	Antarctic fur seal
South Pacific Albacore Troll	2	Undetermined
Western Pacific Pelagic	4	Undetermined



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

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

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

GMX- Gulf of Mexico.

NEI - Not Elsewhere Identified.

Unspecified - Identifies the number of valid high seas permits for a fishery that, as of 2004, is no longer authorized under the HSFCA - High Seas Fishery Compliance Act. Once these permits expire (valid for 5 years), fishers will be required to obtain a permit for one of the seven currently authorized HSFCA fisheries to continue fishing on the high seas.

WNA - Western North Atlantic.

\* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.

\*\* These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for five years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.

+ The marine mammal species or stock listed as killed/injured in this fishery has been observed taken by this fishery on the high seas.

^ The list of marine mammal species killed/injured in this fishery is identical to the list of marine mammal species killed/injured in U.S. waters component of the fishery, minus coastal stocks, because the marine mammal species are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the fisheries operating in U.S. waters.

Table 4 - Fisheries Affected by Take Reduction Teams and Plans

Take Reduction Plans	Affected Fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP) - 50 CFR 229.32	<u>Category I</u> Mid-Atlantic gillnet Northeast/Mid-Atlantic American lobster trap/pot Northeast sink gillnet  <u>Category II</u> Atlantic blue crab trap/pot Atlantic mixed species trap/pot Northeast anchored float gillnet Northeast drift gillnet Southeast Atlantic gillnet Southeastern U.S. Atlantic shark gillnet*
Bottlenose Dolphin Take Reduction Plan (BDTRP) - 50 CFR 229.35	<u>Category I</u> Mid-Atlantic gillnet  <u>Category II</u> Atlantic blue crab trap/pot Mid-Atlantic haul/beach seine NC inshore gillnet NC long haul seine NC roe mullet stop net Southeast Atlantic gillnet Southeastern U.S. Atlantic shark gillnet VA pound net
Harbor Porpoise Take Reduction Plan (HPTRP) - 50 CFR 229.33 (Gulf of Maine) and 229.34 (Mid-Atlantic)	<u>Category I</u> Mid-Atlantic gillnet Northeast sink gillnet
Pelagic Longline Take Reduction Plan (PLTRP) - 50 CFR 229.36	<u>Category I</u> Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline
Pacific Offshore Cetacean Take Reduction Plan (POCTRP) - 50 CFR 229.31	<u>Category I</u> CA/OR thresher shark/swordfish drift gillnet ( $\geq 4$ in mesh)
Take Reduction Teams	Affected Fisheries
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	<u>Category II</u> Mid-Atlantic Bottom Trawl Mid-Atlantic Mid-Water Trawl (Including Pair Trawl) Northeast Bottom Trawl Northeast Mid-Water Trawl (Including Pair Trawl)

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

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

## Classification

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

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA and obtain an Authorization Certificate. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. Additionally, fishers may be subject to a Take Reduction Plan (TRP) and requested to carry an observer. NMFS has estimated that approximately 59,500 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register with NMFS. The MMPA registration process is integrated with existing state and Federal licensing, permitting, and registration programs. Therefore, fishers who have a federal or state fishery permit or landing license, or who are authorized through another related federal or state fishery registration program, are currently not required to register separately under the MMPA or pay the \$25 registration fee. Therefore, there are no direct costs to small entities under this proposed rule.

If a vessel is requested to carry an observer, fishers will not incur any direct economic costs associated with carrying that observer. Potential indirect costs to individual fishers required to take observers may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. For effective monitoring, however, observers will rotate among a limited number of vessels in a fishery at any given time and each vessel within an observed fishery has an equal probability of being requested to accommodate an observer. Therefore, the potential indirect costs to individual fishers are expected to be minimal because observer coverage would only be required for a small percentage of an individual's total annual fishing time. In addition, section 118 of the MMPA states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting

vessels too small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and was not prepared. In the event that reclassification of a fishery to Category I or II results in a TRP, economic analyses of the effects of that plan will be summarized in subsequent rulemaking actions.

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

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

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

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA in June 1995. NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 EA and the 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This proposed rule would not make any significant change in the management of reclassified fisheries, and therefore, this proposed rule is not expected to change

the analysis or conclusion of the 2005 EA. The Council of Environmental Quality (CEQ) recommends agencies review EAs every five years; therefore, NMFS reviewed the 2005 EA in 2009. NMFS concluded that, because there have been no changes to the process used to develop the LOF and implement section 118 of the MMPA (including no new alternatives and no additional or new impacts on the human environment), there is not a need to update the 2005 EA at this time. If NMFS takes a management action, for example, through the development of a TRP, NMFS will first prepare an environmental document, as required under NEPA, specific to that action.

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

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

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

## References

Barlow, J., and K.A. Forney. 2007. Abundance and population density of cetaceans in the California Current ecosystem. *Fishery Bulletin* 105:509-526.

Dated: June 4, 2009.

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