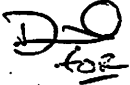


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver 
Executive Director

DATE: February 1, 2006

SUBJECT: Protected Resources Report

ESTIMATED TIME 2 HOURS

ACTION REQUIRED

Receive report on Protected Resources issues and take action as necessary.

BACKGROUND

A. FMP Level Consultation

At its October 2005 meeting, the Council asked NMFS' Office of Sustainable Fisheries to request formal Section 7 consultation with the NMFS Office of Protected Resources. In response to the Council's request, at the December 2005 meeting NMFS provided an overview that outlined the agency's plans for the consultation process and summarized the information that needs to be assembled in a consultation package. The Council concurred with the agency's proposed approach, and intends to track the consultation process, partly through its Steller Sea Lion Mitigation Committee. A draft schedule of the consultation process was provided to the Council in December 2005; a copy of that schedule is attached as Item B-6(a).

Since the December 2005 meeting, NMFS has convened a consultation team comprised of representatives from the NMFS Protected Resources and Sustainable Fisheries Divisions, the Office of NOAA General Counsel, the Alaska Fisheries Science Center (NMML and REFM), and the Council (staff). The consultation team has met several times by teleconference, and has initiated the preparation of a consultation package which will consist of a series of documents, one of which is a Biological Assessment that summarizes information on the proposed action (the groundfish FMPs); the BA will provide:

- A description of the action to be considered
- A description of the specific area that may be affected by the action
- A description of any listed species or critical habitat that may be affected by the action
- A description of the manner in which the action may affect any listed species or critical habitat and an analysis of cumulative effects
- Relevant reports, including any EISs, EAs, or biological assessments
- Any other relevant information on the action, the affected species, or critical habitat

The consultation package will also include a summary of research conducted since the last FMP-level consultation. The latter is being assembled through a contract with two experts in Steller sea lion research and publications, Drs. Tom Loughlin and Jack Tagart; their work will culminate in a draft report by March 2006. This will be an annotated bibliography of Steller sea lion related research, a synthesis of this scientific information, and copies of the full research papers referenced in the compendium report.

The consultation team intends to have this information package completed in the next month or so; when received and accepted by the Protected Resources Division, this will initiate the formal consultation process. The process will continue for several months, and at the end of that period of time NMFS PR will prepare a draft Biological Opinion; this is currently scheduled for late August 2006. The Council will receive periodic reports on the progress of the consultation.

The Steller Sea Lion Mitigation Committee (SSLMC) has been appointed and will track the consultation process (see Agenda D-3(a) for Council committee information). This committee intends to meet several times in the coming months to review the scope of the consultation and species involved, the Section 7 requirements of the Endangered Species Act, and new information and data on Steller sea lion populations and trends and fishery interaction study results. The SSLMC will be the principal interface between the consultation and the Council, and eventually will call for proposals, and make recommendations to the Council, for possible changes in fishing regulations.

B. Alaska Board of Fisheries P. Cod Fishery Proposal

At the December 2005 meeting, the Council was informed that the Alaska Board of Fisheries (BOF) has developed a proposal for a State water fishery for Pacific cod in the Aleutian Islands region. BOF Proposal 399 (Item B-7(b)) would provide for a P. cod fishery "funded" by an annual allocation of 3 percent of the Federal TAC. The proposed fishery would occur west of 170° West; it would commence in 2006 and allow nonpelagic trawl and longline gear in 2006 only, after which only pot, jig, and hand troll gear would be permitted. The BOF is scheduled to take action on this proposal at its February 20-26, 2006 meeting in Ketchikan. The Council sent a letter to the BOF outlining some potential concerns over this proposal (Item B-7(c)) and NMFS also sent a letter to the BOF on the proposal (Item B-7(d)).

The Council met with the BOF on February 3, 2006 to discuss Proposal 399 and the management, Steller sea lion, and stock conservation issues it raises. A report on the joint Council/BOF meeting will be provided; State, NMFS, and Council staffs are available to answer questions.

C. Lists of Fisheries for 2005 and 2006

As required by the Marine Mammal Protection Act, NMFS annually publishes a List of Fisheries (LOF) that places all U.S. commercial fisheries into one of three categories based on the level of serious injury or mortality to marine mammals that occur in each fishery. The Proposed Rule for the LOF for 2005, published December 2, 2004 (69 FR 70094), listed changes that will affect certain Alaskan groundfish fisheries; the agency proposed to place the following fisheries into Category II:

- BSAI Pacific cod longline
- BSAI Greenland turbot longline
- BSAI pollock trawl
- BSAI flatfish trawl
- Bering Sea sablefish pot

The Council and its SSC provided comments on the Proposed Rule and the Final Rule was published January 5, 2006; that Federal Register notice was sent in a Council mailing early in January. The Final Rule retains the classification noted above; it also responds to the comments submitted by the Council and SSC. The Final Rule is provided in the attached Item B-7(e). The Council's comments on the LOF for 2005 are also attached (Item B-7(f)).

NMFS intends to publish the draft LOF for 2006 soon, after which there will be a 30-day period within which to provide comments.

D. EIS on Marine Mammal Research Grants and Scientific Permits

A Humane Society lawsuit, filed in July 2005, claims that NMFS has violated the APA, MMPA, and NEPA in authorizing Steller sea lion research permits and asks that research permits issued in 2005 be vacated and that an EIS be prepared, among other requests. In response, NMFS has initiated the preparation of an EIS on Steller sea lion and northern fur seal research and permitting, but intends to allow currently-issued research permits to be processed and granted.¹ A Steller sea lion/northern fur seal EIS scoping meeting was held in Anchorage January 23, 2006 in conjunction with the Marine Science Conference. Other scoping meetings previously held were in Silver Spring, MD (January 18) and Seattle (January 20). Once the comments have been reviewed and collated, NMFS intends to convene a workshop to facilitate communication and coordination among Steller sea lion and fur seal researchers and the interested public on research needs and research methods.

The Council has previously responded to this issue in a letter to Dr. Hogarth dated November 9, 2005 (Item B-7(g)) expressing concern that research necessary to improve marine mammal conservation and to facilitate preparation of fishery regulations will be greatly impeded. Now that a public scoping process has been initiated, and comments on the issues that should be covered in the EIS are being invited, the Council may wish to provide this same letter, or a similar letter, to NMFS for the EIS record. Comments are due February 25, 2006. Steve Leathery of NMFS has indicated he is willing to brief the Council in the future on the status of the lawsuit and the EIS. Public comments can be provided in writing or by email; the email address for providing comments is ssleis.comments@noaa.gov. The project's web site is at <http://www.nmfs.noaa.gov/pr/permits/eis/steller.htm>.

E. SSL Recovery Plan Nearing Completion

The Steller Sea Lion Recovery Plan is expected to be drafted by the end of February 2006. The draft is being developed by a subgroup of members of the SSL Recovery Team. When the subgroup completes the draft plan, it will be provided to the full SSL Recovery Team for review in a meeting scheduled for March 15-17, 2006 at the Alaska Fisheries Science Center. The Recovery Team will either accept the additions and changes made by the subgroup or provide alternate language that will be voted on. At that time the draft Recovery Plan will be turned over to NMFS and the agency will proceed with peer review and then public review. The Council will receive copies of the draft Recovery Plan when available for public review.

¹ NMFS is also preparing a separate EIS on northern right whale research permitting. See notice in the Federal Register, Vol 70 No 199, October 17, 2005. See NMFS web site for more information: <http://www.nmfs.noaa.gov/pr/rightwhale/>.
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F. Seabirds

At its December 2005 meeting, the Council received a report on a draft recovery plan for the endangered short-tailed albatross. The Council decided to comment on the draft recovery plan and submitted a letter to the U.S. Fish & Wildlife Service on December 19, 2005 (see Item B-7(h)).

The Pacific Seabird Group will convene its annual meeting February 15-18, 2006 in Girdwood, Alaska. One technical session in this year's PSG meeting will focus on commercial fishery interactions with seabird populations (see Item B-7(i)). Council staff has been invited to present an overview of the Council process and how the Council is addressing concerns over seabird interactions with groundfish fisheries.

A recent article reports that the number of albatrosses nesting on Midway Island is the highest recorded. This year the nesting albatross population on Midway includes a short-tailed albatross (see Item B-7(j)).

G. Northern Right Whale March 2 or 3 for PJB H. 28

During its December 2005 meeting, the Council received a report on the designation of critical habitat for the northern right whale. Two critical habitat areas are proposed by NMFS, one in the Bering Sea and another in the Gulf of Alaska near Kodiak Island. The Council provided comments on the proposed designation in a letter to NMFS dated December 19, 2005 (see Item B-7(k)). The Council's letter included comments from the SSC and included information on the magnitude of the groundfish, crab, and halibut harvests in the two areas and the economic value of these harvests to fishermen, processors, and communities. The comment period ended January 3, 2006; the Final Rule will be published on or before June 30, 2006.

NMFS has received a request from a member of the public for a hearing on the critical habitat designation (Item B-7(l)). The agency has granted that request and intends to convene a public meeting on March 2, 2006 (this is a tentative date – location likely to be Anchorage). Further details will be announced in a Federal Register notice expected to be published soon. The Proposed Rule comment period will be re-opened in conjunction with the hearing (a period tentatively scheduled for March 1-7, 2006) and a summary of comments received to date will be provided at the hearing and in the Federal Register notice announcing the hearing. Additional information will be provided to the Council when available.

On January 26, 2006 NMFS published in the Federal Register a 90-day finding regarding a petition from the Center for Biological Diversity (CBD) to list the North Pacific population of northern right whale as a separate species (Item B-7(m)). NMFS believes that the CBD petition provides sufficient scientific information that the requested action may be appropriate, and is soliciting data to substantiate such an action and public comment. The comment period ends April 26, 2006.

H. Fishery Depredation Symposium

The Vancouver Aquarium is hosting a "Symposium on Fisheries Depredation by Killer and Sperm Whales: Behavioural Insights, Behavioural Solutions" October 2-5, 2006 near Vancouver, B.C. This symposium will focus on depredation of fish from fishing gear by killer and sperm whales, and will include presentations from experts on whale behavior, depredation loss, and fishery management. The symposium will generate information on how to reduce killer and sperm whale depredation of fish from fishing gear, and how to minimize the spread of this behavior to other areas and to other fisheries. An announcement of the symposium is attached (Item B-7(n)).

Potential timeline for the FMP level consultation and related Council activities.

Time	Activity
December-January	<ul style="list-style-type: none"> • Develop 404.14(c) requirements (State/Council/SFD) • Develop biological assessment (402.12) • Develop major issues for the consultation phase
February 2006	<ul style="list-style-type: none"> • Consultation ends for some species and their critical habitat with a “not likely to adversely affect” decision based on a biological assessment • SFD initiates consultation with 402.14(c) requirements completed for species or their critical habitat likely to be adversely affected
February-April	<ul style="list-style-type: none"> • Background development of BiOp; incorporate information from 402.14(c) (description of the action, action area, status of species, environmental baseline, cumulative effects) • Consultation with SFD/AFSC
April 15, 2006	<ul style="list-style-type: none"> • Responses to questions/issues raised during consultation due (AFSC/SFD)
April-August	<ul style="list-style-type: none"> • Develop draft BiOp (effects of the action, draft conclusions, reasonable and prudent alternative if necessary, incidental take statement, conservation recommendations), and conduct internal review (HQ)
August 15, 2006	<ul style="list-style-type: none"> • Draft BiOp available for public review
September 1, 2006	<ul style="list-style-type: none"> • SSLMC review BiOp and develop workplan/comments
October 2006	<ul style="list-style-type: none"> • Council Review BiOp and SSLMC recommendations
December 2006	<ul style="list-style-type: none"> • Council initial review of potential changes to the action • Comments due on draft BiOp
February 2007	<ul style="list-style-type: none"> • Council further review of proposed action
April 2007	<ul style="list-style-type: none"> • Council takes Final Action on amendment/regulations
August 2007	<ul style="list-style-type: none"> • Final BiOp completed
January 1, 2008	<ul style="list-style-type: none"> • Regulations effective

PROPOSAL 399 - 5 AAC 28.6XX. Aleutian Islands District Pacific Cod Management Plan.
Create a new regulation as follows to conduct an Aleutian Islands state-waters Pacific cod fishery:

- (a) This management plan governs the harvest of Pacific cod in the Aleutian Islands District west of 170° W longitude, of the state Bering Sea-Aleutian Islands Area.
- (b) Each year the commissioner shall open and close, by emergency order, a parallel Pacific cod season in the Aleutian Islands District west of 170° longitude to coincide with the initial federal season in the federal Bering Sea-Aleutian Islands Area. The commissioner shall open and close, by emergency order, the parallel Pacific cod season during which the use of the same gear allowed in the federal Bering Sea-Aleutian Islands Area Pacific cod season is permitted, unless use of that gear is prohibited under 5 AAC 28.050 or 5 AAC 28.629.
- (c) The commissioner shall open, by emergency order, a state-waters Pacific cod season in the Aleutian Islands District west of 170° W longitude on March 15. The commissioner shall, by emergency order, close the state-waters Pacific cod season opened under this subsection when the guideline harvest level is taken or on December 31, whichever occurs first.
- (d) The commissioner may open and close, by emergency order, fishing seasons at times other than those specified in this management plan if:
 - (1) the guideline harvest level specified in (e)(1) of this section has been reached and a federal season is ongoing in adjacent federal waters; or
 - (2) the commissioner determines it is necessary to
 - (A) adapt to unanticipated openings and closures of the federal season;
 - (B) maintain sustained yield management; or
 - (C) provide for orderly fisheries.
- (e) During a state-waters season
 - (1) the guideline harvest level for Pacific cod in the Aleutian Islands District west of 170° W longitude is 3 percent of the estimated total allowable harvest of Pacific cod for the federal Bering Sea-Aleutian Islands Area;
 - (2) Pacific cod may be taken only with groundfish pots, mechanical jigging machines, and hand troll gear.
 - (3) During 2006, in addition to the gear types specified in (2) of this subsection, non-pelagic trawl and longline gear may be used during the state-waters season except from May 1 – September 15. Trawl gear may only be operated during the state-waters Pacific cod fishery in those waters opened for non-pelagic trawling during the parallel Pacific cod fishery. A vessel must be registered to fish with non-pelagic trawl or longline gear; a vessel's gear registration may be changed during a state-waters season to a different gear registration if the owner, or the owner's agent, submits a written request for a change in registration by mail, facsimile, or in person, to the department office in Dutch Harbor, and that registration has been validated by the department.
- (f) In addition to the requirements of 5 AAC 28.020, a vessel must be registered to fish with pot gear or with mechanical jigging machines and hand troll gear (jig gear), and may be registered to fish only with one of these two gear types; a vessel's gear registration may be changed during a state-waters season to a different gear registration if the owner, or the owner's agent, submits a written request for a change in registration by mail, facsimile, or in person to the department office in Dutch Harbor, or other locations specified by the department for validation, and that registration has been validated by the department;
- (g) the Aleutian Islands District is a nonexclusive registration area for Pacific cod during a state-waters season.

Also:

If the above is adopted, amend 5 AAC 28.081, Gulf of Alaska Pacific cod management plans, to include the proposed Aleutian Islands state-waters Pacific cod fishery.

If the above is adopted, consider amendments to 5 AAC 28.629(d)(1 and 2) and (e), lawful gear for Bering Sea-Aleutian Islands Area. For example 5 AAC 28.629(d)(1) allows trawl vessels less than or equal to 60 feet to operate in Sitkin Sound for Pacific cod year-round. That contradicts the trawl exclusion from May 1 – September 15 in the proposal.

ISSUE: The board generated this proposal at its December 2005 meeting. The board scheduled it for consideration at the January 2006 meeting.

WHAT WILL HAPPEN IF NOTHING IS DONE?

WILL THE QUALITY OF THE RESOURCE HARVESTED OR PRODUCTS PRODUCED BE IMPROVED?

WHO IS LIKELY TO BENEFIT?

WHO IS LIKELY TO SUFFER?

OTHER SOLUTIONS CONSIDERED?

PROPOSED BY: Alaska Board of Fisheries

(HQ-05-F-312)

North Pacific Fishery Management Council

AGENDA B-7(c)
FEBRUARY 2006

Stephanie Madsen, Chair
Chris Oliver, Executive Director



605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone (907) 271-2809

Fax (907) 271-2817

Visit our website: <http://www.fakr.noaa.gov/npfmc>

December 21, 2005

Art Nelson
Chairman, Alaska Board of Fisheries
Alaska Department of Fish & Game
PO Box 25526
Juneau, AK 99802

Dear Mr. Nelson,

In order to further facilitate our continued cooperation on issues related to the State and Federal groundfish fisheries, I am writing to request that the Board of Fisheries (BOF) postpone taking action on a proposed Aleutian Islands Pacific cod fishery in State waters currently on the agenda for your upcoming January 22-February 1, 2006 meeting in Ketchikan. The North Pacific Fishery Management Council became aware of this proposal at its December 2005 meeting, and due to a number of concerns and questions raised by the proposal, we believe it would be appropriate for the BOF and the Council to have an opportunity to jointly discuss the proposal before the BOF takes action.

As we understand it, the proposal calls for apportioning three percent of the Bering Sea/Aleutian Islands (BSAI) Pacific cod total allowable catch (TAC) to an Aleutian Islands Pacific cod State water fishery that could be fished only west of 170 degrees West longitude. The Council briefly discussed the proposal, and is concerned about several issues associated with this proposed fishery:

Resource Conservation

Under current Federal regulations, the BSAI area Pacific cod fishery is managed under one geographic TAC – i.e. a separate quota is not established for the Aleutian Islands. The BSAI TAC is allocated seasonally to comply with Steller sea lion protection measures, and also is apportioned to various sector and gear groups. Currently, 10 separate federal allocations are established and separately managed. In recent years, and likely in the foreseeable future, the Council sets TAC equal to the Acceptable Biological Catch (ABC) for Pacific cod in the BSAI. The TAC is fully harvested, although the gear and sector allocations are reapportioned throughout the year to accomplish that goal.

For conservation of managed groundfish stocks, the Council never sets a TAC for any fishery that exceeds the ABC for that species. However, if the BOF were to approve a new Aleutian Islands Pacific cod fishery for 2006 with a quota of 3 percent of the BSAI ABC (or about 6,000 mt), the harvest of Pacific cod in that fishery could exceed the ABC for the BSAI Pacific cod stock, unless NMFS publishes a re-specification of the TAC, or manages other federal fisheries in-season to account for the reduction. This is because the Council has already approved a Federal fishery TAC that equals the ABC; any new State fishery that is based on a percentage of the 2006 Pacific cod ABC may result in harvests over ABC. A related but an important concern is that the BSAI Pacific cod stock assessment recognizes that the overall biomass is distributed primarily in the Bering Sea, with a much smaller fraction in the Aleutian Islands (approximately 15 percent). Since the Aleutian Islands Pacific cod biomass is such a small proportion of the BSAI biomass, an apportionment of three percent of the aggregate BSAI ABC as a

quota exclusively to a small area of the Aleutian Islands could result in a disproportionate harvest of the smaller Aleutian Islands component of the BSAI Pacific cod stock. This could have stock conservation consequences as well as trigger Steller sea lion concerns, as Pacific cod is an important component of sea lion diet in the Aleutian Islands (see below). As part of the Council's ongoing consideration of Pacific cod allocations under Amendment 85, we are also considering an explicit split of the AI cod quota from the BS cod quota.

Steller Sea Lion Protections

While the BOF proposal seeks to comply with current Federal Steller sea lion protection measures, the Council believes it is possible that a new Pacific cod fishery in State waters in the Aleutian Islands could trigger a reinitiation of formal Section 7 consultation under the Endangered Species Act. I believe the BOF is very familiar with this issue, as we have discussed the ESA consultation process on several occasions. At issue here is the change in how the Pacific cod fishery would be prosecuted. Currently the fishery is open throughout the Bering Sea and the Aleutian Islands. But a BOF action to allocate a percentage of the TAC specifically to the Aleutian Islands, even if outside sea lion closed areas, might be viewed as a change in the action on which the previous consultation was based, and thus require a new consultation. While we heard from Mr. Morris in December that there would be no new open areas, the proposal itself is silent in that regard. The Council has already initiated a new formal consultation at the FMP level, and certainly could accommodate a proposal for a change in Pacific cod fishery management in that process. However, this consultation will take time to complete and a reinitiation of consultation focused only on the proposed State water Pacific cod fishery would postpone the broader effort and delay opportunity for a review of the Federal and parallel groundfish fisheries.

Impact on other Participants

While the BOF proposal would strive to coordinate federal and state water fisheries for the purposes of quota management, this objective would likely be frustrated due to the fact that the federal fishery involves 10 separate Pacific cod quotas that are separately managed on a seasonal basis. Some of these quotas support fisheries that may be ongoing for a large part of the year and certainly beyond mid-March. Related to this is the question of whether the BOF proposal would contain some mechanism for a rollover of any unused quota back to these federal fishery sectors, particularly after 2006 when trawl gear does not appear to be allowed by the BOF proposal.

Bycatch Monitoring, Accounting and Enforcement

The BOF proposal does not define a process for monitoring or accounting for bycatch in the Aleutian Islands State water Pacific cod fishery. Halibut may be harvested incidental to Pacific cod, and under Federal regulations halibut is a prohibited species and must be discarded when taken as bycatch. There are limits on the amount of halibut that can be taken as bycatch in various Federal fisheries, and when these limits are reached these fisheries are closed. The management of the federal fisheries relies on observer data to estimate halibut bycatch mortality. It is unclear what accounting procedure would be used to manage halibut bycatch in a State waters Pacific cod fishery, and whether that halibut bycatch would accrue toward Federal caps for Federal fisheries. If this halibut bycatch adds to the Federal Pacific cod halibut bycatch cap, Federal fisheries could close early if halibut bycatch caps are reached earlier, resulting in economic impacts in Federal fisheries. Other species taken as bycatch in a Pacific cod fishery include Pollock, rock sole, Northern rockfish, skates, sablefish and other groundfish species. The BOF proposal does not define how non-target species bycatch will be managed and to what extent federally managed fisheries for these species would be impacted.

The Council would be concerned if vessels fishing in a State water fishery would not be required to carry VMS units, to ensure that vessels are operating within the prescribed areas and not, for example, operating in areas of critical habitat closed to protect Steller sea lions.

Amendment 85

The Council is in the process of considering Amendment 85 to the BSAI Fishery Management Plan, which would re-evaluate the existing sector allocations of BSAI Pacific cod. Among the alternatives being considered is an increase in the allocation to the less than 60' fixed gear sector (from the current .7% up to 2%), as well as options to roll unused jig sector allocation (a separate allocation of 2%) to the less than 60' fixed gear sector. The Council believes that a delay in your possible action should not impact the ability of the small vessel fleet (less than 60 ft length overall) using hook and line, jig, or pot gear to harvest BSAI Pacific cod in the parallel fishery given that these vessels do not currently fully harvest their federal allocations.

Given these issues associated with the proposed Aleutian Islands State water Pacific cod fishery a meeting of the Council and BOF together would allow the opportunity to discuss these issues and seek a resolution that is satisfactory to both the Council and the BOF.

Thank you for considering this request, and Happy Holidays to you and all the Board of Fish members!

Sincerely,

Stephanie D. Madsen

Stephanie D. Madsen
Chair

Cc: Council members



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

January 17, 2006

RECEIVED
JAN 19 2006
N.P.F.M.C.

Mr. Art Nelson, Chair
Alaska Board of Fisheries
P.O. Box 25526
Juneau, Alaska 99802-5526

Dear Mr. Nelson:

Thank you for the opportunity to provide comments on a proposal under consideration by the Alaska Board of Fisheries (BOF) to open Alaska State waters in the Aleutian Islands for a Pacific cod fishery (Proposal 399). We understand that the BOF intends to address this proposal during its February 20-26, 2006, meeting in Ketchikan. We will have staff available at that meeting to answer any questions you may have on federal management of the Pacific cod fisheries and related implications of the proposed State water fishery.

The December 21, 2005, letter to you from the North Pacific Fishery Management Council (Council) articulated most of our concerns. Our letter is intended to expand on some of the issues raised by the Council and provide some additional background information on the federal fisheries for Pacific cod. We present several general comments and then delve into more detail on specific issues.

First, Proposal 399 does not address some specific provisions that would need to be considered for a complete assessment of the proposal relative to Steller sea lion protection measures and implications to the existing management of the federal fisheries for Pacific cod. For purposes of this letter, we assume that the proposal would embrace the existing Steller sea lion protection measures implemented for the federal Pacific cod fisheries in the Aleutian Islands. Generally, these measures include gear specific area closures around haulouts, rookeries and in the Segum foraging area; seasonal apportionments of harvest; a catch monitoring program to ensure that area and seasonal harvest quotas are not exceeded; and requirements for a vessel monitoring system (VMS) to monitor area closures. The extent to which the BOF action would include these provisions would influence whether or not we would be required under the Endangered Species Act to initiate a responsive section 7 consultation on the federal fisheries.

Second, Proposal 399 would reallocate three percent of the acceptable biological catch (ABC) annually specified for Bering Sea and Aleutians Island Area (BSAI) Pacific cod from the federal fisheries to the State-water guideline harvest level (GHL) fishery in the Aleutian Islands. This reallocation would result in a proportional decrease in the federal fishery allocations for Pacific cod, including the amount of Pacific cod allocated to the Western Alaska Community Development Quota (CDQ) Program. We assume the State's objective for such a reallocation



would be to provide for additional fishing opportunity in State waters. However, such opportunity currently is not limited in the State parallel fishery for the small boat fleet comprised of vessels less than 60 feet length overall using non trawl gear (<60 fleet). The federal allocation of Pacific cod to this group of vessels currently is not fully harvested and could allow for increased harvest in the federal and parallel fishery in the Aleutian Islands should vessels choose to fish there.

The 2005 harvest of Pacific cod by the <60 fleet was extremely small relative to the total catch of cod by vessels using trawl gear. The proposed GHF would be three percent of the BSAI ABC. In 2006, the BSAI ABC of 194,000 mt would result in a GHF of 5,820 mt. The proposal does not allow for GHF amounts less than three percent of the BSAI ABC which might better reflect the limited nature of the current pot and jig gear fishery in the Aleutian Islands subarea. If the BOF action on Proposal 399 limits the harvest of the GHF beyond 2006 only to vessels using pot or jig gear, we recommend a stair-step approach that would allow an annual GHF to be established at a level less than three percent of the BSAI ABC until such time the State waters pot and jig fishery is able to harvest the full proposed GHF level.

Specific information on the existing BSAI Pacific cod fisheries and potential management concerns are presented below.

Distribution of catch between federal and state waters and general harvest pattern

Federal and State data confidentiality standards limit the description of harvesting and processing activity for Pacific cod in the Aleutian Islands to annual average trends. Between 2002 and 2005, an annual average of 10,218 mt of Pacific cod was harvested in the Aleutian Islands subarea (Federal Reporting Areas 541-543 in Figure 1) and delivered by catcher vessels to shoreside processors. Area 541 accounted for 8,192 mt or 87% of that average. The remainder was taken in area 542 with 10 mt or less taken in 543.¹ Within area 541, catch has averaged 72% within Federal waters and 28% within State waters. Nearly 100% of the landings were harvested with non-pelagic (bottom) trawl gear. In 2005, very small relative amounts were landed with hook-and-line (longline gear) or jig gear. Only a trace amount of Pacific cod was landed with pot gear.

The landings from the Aleutian Islands subarea have declined by 50 percent since 2003, although the available TAC has remained fairly consistent and has declined by less than a percent between 2003 and 2005. Further, acceptable catch rates of Pacific cod in the Aleutian Islands trawl fishery occur in relatively narrow windows of time and typically later than that experienced in the Bering Sea subarea fishery in the spring. Overall fishing effort also has declined in the Aleutians. In 2003, 66 vessels landed Pacific cod to shore plants. In 2005, only 41 vessels participated in the fishery, a decline of nearly 40%.

¹ Area 541 extends from 170 deg W. longitude to 177 deg W. longitude, area 542 extends from 177 deg W. longitude to 177 deg E. longitude, area 543 extends from 177 deg E. longitude to the extent of the EEZ.

Federal fisheries and total allowable catch (TAC) amounts available to vessels using pot or jig gear

BSAI Pacific cod TAC typically is established as an amount equal to the ABC and is fully allocated among 9 different sectors, including separate allocations to pot catcher vessels, hook-and-line catcher vessels, and jig vessels. An additional allocation is made to the <60 fleet using hook-and-line or pot gear, from which catch is deducted only when the pot catcher vessel and hook-and-line catcher vessel fisheries are closed. The <60 fleet also is eligible to receive a series of reapportionments of unharvested amounts of the jig gear allocation. In 2005, three of these reallocations were made resulting in 2,000 mt of Pacific cod being added to the 1,354 mt originally allocated to the <60 fleet. In 2005, pot vessels <60 feet caught about 3,000 mt. Hook-and-line vessels <60 feet caught about 1,000 mt. A portion of that catch was deducted from the allocations to pot and hook-and-line catcher vessels. *Virtually the entire catch by the <60 fleet was taken in the Bering Sea subarea.*

In 2005, quota was available for the <60 fleet from January 1 through April 19th. More than 90% of the annual catch by each gear type in the <60 fleet occurred between late February and late April. The fishery reopened on August 8, initially to pot gear and then to hook-and-line gear on August 15 once halibut bycatch became available. The catcher vessel pot gear B season fishery (including vessels of all sizes) opened on September 1 and remained open until December 31. While significant quota is available for the <60 fleet, participation in the cod fishery is very low in the summer and fall months due primarily to the low catch rates of cod and halibut bycatch restrictions for vessels using hook-and-line gear. Occasionally, effort will show a limited increase in late December.

The jig gear fishery is open each year from January 1 through December 31. In 2005, jig gear took 117 mt of its annual allocation of 3,811 mt. While reallocations have been made from jig to both the <60 fleet and to hook-and-line catcher processors each year, enough jig quota has been left to maintain the fishery. If effort increases, the reapportionment to the other gear types would be reduced or eliminated.

In summary, the federal management of the Pacific cod TAC would allow for increased fishing effort in the Aleutian Islands subarea in both federal and parallel fisheries, particularly by the <60 non trawl fleet. However, vessel operators in the <60 fleet generally have chosen not to fish in this area. Reasons for this choice likely include transit time and fuel costs to fishing grounds, availability of processing facilities, overall catch rates of cod at certain times of the year, and safety concerns.

Fishery Management Issues

Reallocation of TAC in 2006. The Council and the National Marine Fisheries Service (NMFS) already have established the 2006 TAC for the federal fishery as equal to ABC. The federal fishery for non-trawl gear began on January 1, 2006. Trawl gear opened on January 20. If the BOF takes action to establish an Aleutian Islands GHL for Pacific cod in 2006, the federal TAC must be reduced by three percent to avoid overall harvest amounts in the BSAI that exceed the

ABC. We would make these adjustments using an inseason authority established in federal regulations at 50 CFR 679.25.

Table 1 lists how Pacific cod TAC is allocated among eight directed fisheries, the CDQ program and an incidental catch account for pot and hook-and-line fisheries, for a total of 10 separate allocations (15 if each of six separate CDQ group allocations are counted). These allocations are further apportioned seasonally. Table 1 also lists how these allocations would be reduced if a State-water GHL is established.

By March 15, the anticipated start date of a state water fishery, the first seasonal apportionments in the 2006 federal fisheries likely will be harvested by hook-and-line catcher/processors, hook-and-line catcher vessels, pot catcher/processors, pot catcher vessels, trawl catcher/processors and trawl catcher vessels. If NMFS reduces the TAC in response to three percent of the ABC being reallocated to the State-waters GHL fishery, harvests of Pacific cod in each of these federal fisheries would exceed their A season allocation. Any overage would be deducted from their next seasonal allocation.

Concurrent openings of federal and State water Pacific cod fisheries. BOF Proposal 399 does not allow for a clear assignment of catch to either a federal TAC or to a State GHL. The proposal allows the Commissioner of the Alaska Department of Fish and Game (ADF&G) to close the State-waters fishery and open the parallel fishery when the Federal fishery is open. It does not explicitly state that a State-waters fishery can only occur when the Federal fishery is closed.

If a State-waters cod fishery is allowed to coincide with the federal fishery, assignment of landed catch to the appropriate allocation account is confounded. A combined federal and State-waters GHL fishery allows fishing to occur on either side of the State and federal three mile boundary. Clearly assigning catch to either a State-waters GHL or to a federal TAC could be difficult. Based on shoreside landed catch reported by State of Alaska statistical areas during the 2002-2005 parallel fisheries, 24% of the catch came from State waters. Most of the Pacific cod, therefore, came from Federal waters indicating better fishing farther off shore.

If the State-water and federal fisheries for Pacific cod are allowed to occur concurrently, incentives for inaccurate catch reporting may be increased. That being said, concurrent openings likely would be unavoidable given the complexity of the federal allocations and fisheries. We believe that communication and coordination between federal and state managers would help ameliorate reporting and quota management concerns in ways similar to how these concerns have been addressed during concurrent openings of the federal and State fisheries for Pacific cod in the Gulf of Alaska.

Distribution of Pacific cod in the BSAI. As mentioned in the Council's letter to you, most of the Pacific cod biomass is distributed in the Bering Sea. Only 15 percent of the BSAI biomass is estimated to occur in the Aleutian Islands subarea. We do not have good information on the distribution of Pacific cod between federal and state waters in the Aleutian Islands, nor on the movement of cod within and between these areas. Given the lack of information on stock movement and distribution, changes in either federal or State water fisheries for Aleutian Islands

Pacific cod could raise possible Steller sea lion concerns that may need to be considered under the Endangered Species Act.

Catch monitoring of groundfish and halibut bycatch. BOF Proposal 399 is silent on what catch monitoring and reporting requirements would be in place. This concern would be mitigated to the extent that the State water GHL is harvested by pot or jig gear, similar to the Gulf of Alaska GHL fisheries for Pacific cod. Our concern about lack of a monitoring program would be heightened to the extent that trawl or hook-and-line gear is allowed to harvest the State water GHL. In 2006, most of the GHL likely would be harvested by vessels using these two gear types, which are relatively non selective and take incidental catch of other groundfish and halibut. We assume that any bycatch of groundfish in the State-water Pacific cod fishery would be deducted from the federal TACs for these species. An appropriate catch monitoring program should be coordinated with NMFS to ensure that these harvest amounts can be accounted for. We are unclear how Proposal 399 would address the monitoring and accounting of halibut bycatch in these fisheries, particularly in the 2006 trawl and hook-and-line gear fisheries.

Redistribution of unharvested GHL: BOF Proposal 399 does not contain a provision for redistributing the State-waters Aleutian Islands Pacific cod GHL back into the Federal fishery if it remains uncaught. During the 2006 season, the proposal allows both hook-and-line and trawl gear to participate in the fishery. Trawl gear has taken nearly the entire catch of shore landed Pacific cod in the Aleutian Islands in the past. Thus, the 2006 fishery likely would harvest the GHL assuming that Pacific cod are available to the fishery and the trawl fishing effort in 2006 remains the same as 2005. However, in 2007 and beyond, the proposal expects pot and jig gear to catch the GHL. As mentioned above, pot and jig gear fisheries have very little catch history in the Aleutian Islands and likely would not harvest a GHL set at three percent of the BSAI Pacific cod ABC in the foreseeable future. The proposal does not suggest a date when any unharvested GHL may be reallocated for harvest in the Federal fishery.

If the BOF provides for a reapportionment of the GHL back into the federal fishery, NMFS would need to consider which federal fishery would be able to harvest the rollover. Given the history of Pacific cod management in the BSAI, most residual Pacific cod TAC is taken by hook-and-line catcher/processors. However, the Council currently is reconsidering how to allocate Pacific cod among different user groups and increasing the number of allocations to address resource competition issues. A redistribution of the Pacific cod ABC to a State-water GHL and potentially back again to the federal fisheries during a year would be a complicating factor to assess for the future dynamics and management of these fisheries. We recommend instead that the BOF consider a stair-step approach that would allow an annual GHL to be established at a level less than three percent of the BSAI ABC until such time the State waters pot and jig fishery is able to harvest the full proposed GHL level.

Steller sea lion issues

BOF Proposal 399 is silent on some of the Steller sea lion protection measures that are implemented for the federal water fisheries. For example, would the vessels fishing in the State-waters GHL fishery be required to carry a vessel monitoring system to ensure the integrity of area closures established to protect these animals? Would the GHL be seasonally apportioned or

managed to meet the objective of temporal distribution of harvest to mitigate competition with Steller sea lions for prey? If the State-waters fishery takes the entire 3 percent allocation in the A season, formal consultation under the Endangered Species Act may be required to assess whether NMFS may need to adjust the seasonal apportionments of the federal water fisheries to account for the increased proportion of the ABC taken earlier in the year by the GHL fishery.

We have presented many potentially complex issues to consider. If Proposal 399 is adopted by the BOF, NMFS and ADF&G staff will need to work closely together to coordinate management of the state and federal fisheries. We appreciate your consideration of our concerns.

Sincerely



Robert D. Mecum
Acting Regional Administrator

Enclosures: Figure 1- Map of federal BSAI reporting areas
Table 1 – Federal allocations of BSAI Pacific cod

cc: Stephanie Madsen, Chris Oliver, NPFMC
Denby Lloyd, ADF&G

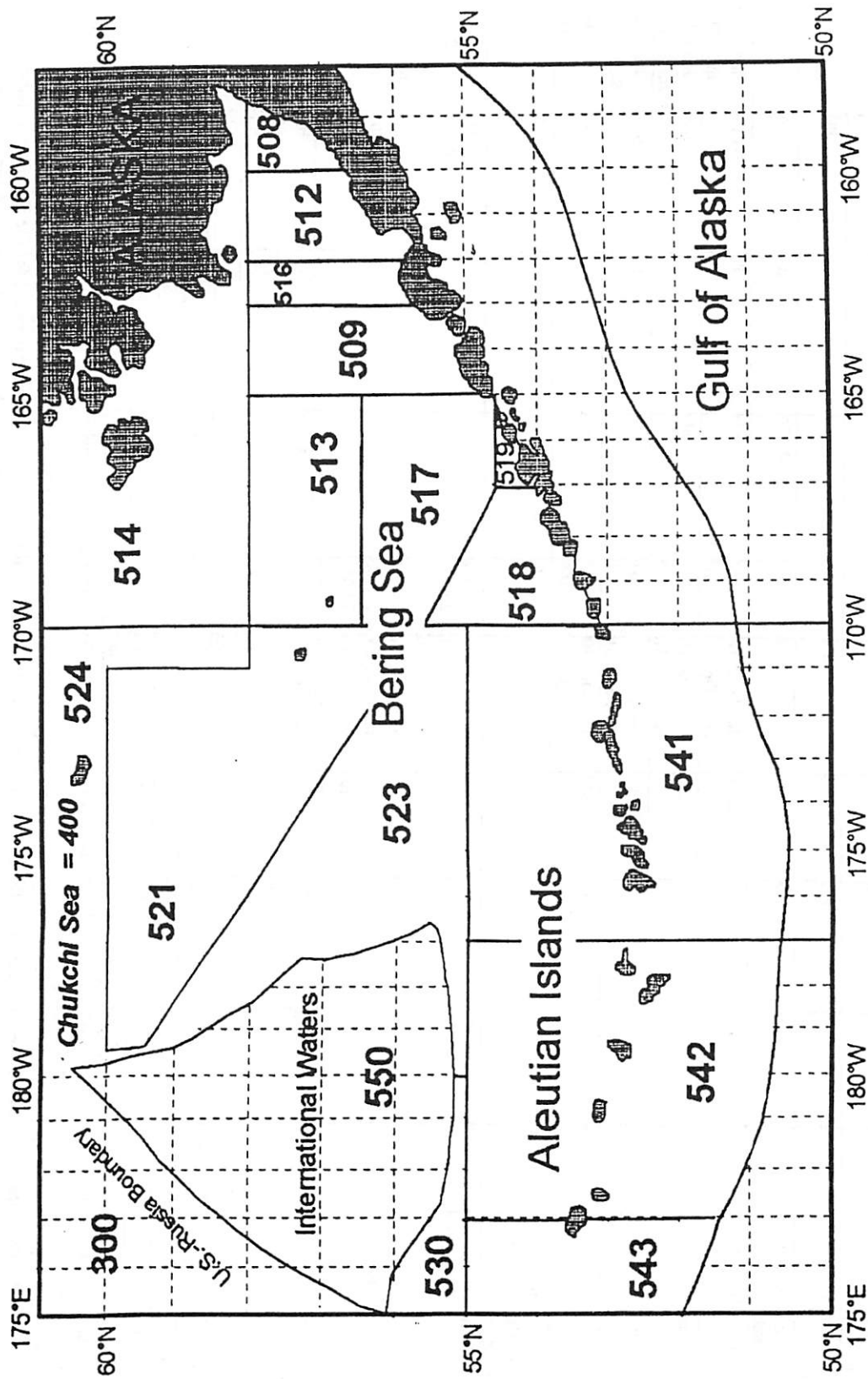


Figure 1 -- Federal reporting areas in the BSAI

TABLE 1-2006 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI
PACIFIC COD ITAC AND ADJUSTMENTS UNDER BOF PROPOSAL 399

[Amounts are in metric tons]

Gear Sector	Percent	2006 Share of gear sector total	2006 Subtotal percentages for gear sectors	2006 Share of gear sector total	2006 Seasonal apportionment ¹		Reduced 2006 Share of gear sector total	Reduced 2006 Subtotal percentages for gear sectors	Reduced 2006 Share of gear sector total	Reduced 2006 Seasonal apportionment ¹	
					Date	Amount				Date	Amount
Total hook-and-line/pot gear	51	91,520	n/a	n/a	n/a	n/a	88,774	n/a	n/a	n/a	n/a
Hook-and-line/pot ICA	n/a	n/a	n/a	500	n/a	n/a	n/a	n/a	500	n/a	n/a
Hook-and-line/pot sub-total	n/a	91,020	n/a	n/a	n/a	n/a	88,274	n/a	n/a	n/a	n/a
Hook-and-line C/P	n/a	n/a	80	72,816	Jan 1-Jun 10	43,690	n/a	80	70,619	Jan 1-Jun 10	42,371
					Jun 10-Dec 31	29,126				Jun 10-Dec 31	28,248
Hook-and-line CV	n/a	n/a	0.3	273	Jan 1-Jun 10	164	n/a	0.3	265	Jan 1-Jun 10	159
					Jun 10-Dec 31	109				Jun 10-Dec 31	106
Pot C/P	n/a	n/a	3.3	3,004	Jan 1-Jun 10	1,803	n/a	3.3	2,913	Jan 1-Jun 10	1,748
					Sept 1-Dec 31	1,201				Sept 1-Dec 31	1,165
Pot CV	n/a	n/a	15	13,653	Jan 1-Jun 10	8,192	n/a	15	13,241	Jan 1-Jun 10	7,945
					Sept 1-Dec 31	5,461				Sept 1-Dec 31	5,296
CV < 60 feet LOA using Hook-and-line or Pot gear	n/a	n/a	1.4	1,274	n/a	n/a	n/a	1.4	1,236	n/a	n/a
Total Trawl Gear	47	84,342	n/a	n/a	n/a	n/a	81,811	n/a	n/a	n/a	n/a
Trawl CV			50	42,171	Jan 20-Apr 1	29,520		50	40,906	Jan 20-Apr 1	28,634
					Apr 1-Jun 10	4,217			n/a	Apr 1-Jun 10	4,091
					Jun 10-Nov 1	8,434			n/a	Jun 10-Nov 1	8,181
Trawl CP			50	42,171	Jan 20-Apr 1	21,086		50	40,906	Jan 20-Apr 1	20,453
					Apr 1-Jun 10	12,651			n/a	Apr 1-Jun 10	12,272
					Jun 10-Nov 1	8,434			n/a	Jun 10-Nov 1	8,181
Jig	2	3,589	n/a	n/a	Jan 1-Apr 30	1,436	3,481	n/a	n/a	Jan 1-Apr 30	1,393
			n/a	n/a	Apr 30-Aug 31	718		n/a	n/a	Apr 30-Aug 31	696
			n/a	n/a	Aug 31-Dec 31	1,435		n/a	n/a	Aug 31-Dec 31	1,393
Total ITAC	92.5	179,450	n/a	n/a	n/a	n/a	174,067	n/a	n/a	n/a	n/a
CDQ	7.5	14,550	n/a	n/a	n/a	n/a	14,114	n/a	n/a	n/a	n/a
Total TAC	100	194,000	n/a	n/a	n/a	n/a	188,180	n/a	n/a	n/a	n/a
State of AK	3	0	n/a	n/a	n/a	n/a	5,820	n/a	n/a	n/a	n/a
ABC		194,000	n/a	n/a	n/a	n/a	194,000	n/a	n/a	n/a	n/a

¹ The status quo allocations are on the left side of the table are status quo. The allocations on the right side of the table includes 3% of the ABC to the State of Alaska.

² The ITAC is the TAC minus 7.5% for the CDQ reserve.

³ For most non-trawl gear the first season is allocated 60 % of the ITAC and the second season is allocated 40% of the ITAC. For jig gear, the first season and third seasons are each allocated 40% of the ITAC and the second season is allocated 20% of the ITAC. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is allocated 60% of the ITAC and the second and third seasons are each allocated 20% of the ITAC. The trawl catcher vessels' allocation is further allocated as 70% in the first season, 10% in the second season and 20% in the third season. The trawl catcher/processors' allocation is allocated 50% in the first season, 30% in the second season and 20% in the third season. Any unused portion of a seasonal Pacific cod allowance will be reapportioned to the next seasonal allowance.

required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border. Although Canadian concurrence has been requested, notification has not yet been received. If a construction permit for Channel 267A at Pigeon, Michigan, is granted prior to receipt of formal concurrence by the Canadian government, the authorization will include the following condition: "Operation with the facilities specified herein for Pigeon, Michigan, is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement, or if specifically objected to by Industry Canada." See SUPPLEMENTARY INFORMATION infra.

DATES: Effective January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket Nos. 01-229 and 01-231, adopted December 14, 2005, and released December 16, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (800) 378-3160, or via the company's Web site, <http://www.bcpiweb.com>. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A).

The Audio Division further, at the request of Edward Czelada, allots Channel 256A at Lexington, Michigan, as the community's second local FM service. Channel 256A can be allotted to Lexington, Michigan, in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 km (7.4 miles) north of Lexington. The coordinates for Channel 256A at Lexington, Michigan, are 43-22-30 North Latitude and 82-32-04 West Longitude. The Government of Canada has concurred in the allotment.

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 256A at Lexington and by adding Pigeon, Channel 267A.

Federal Communications Commission.

John A. Karousos,
Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06-41 Filed 1-3-06; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-3215; MB Docket No. 05-244; RM-11257]

Radio Broadcasting Services; Fruit Cove and St. Augustine, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 70 FR 48361 (August 17, 2005), this document reallocates Channel 231C3 from St. Augustine, Florida to Fruit Cove, Florida, and modifies the license of Station WSOS-FM, accordingly. The coordinates for Channel 231C3 at Fruit Cove are 30-01-27 North Latitude and 81-36-19 West Longitude, with a site restriction of 10.2 kilometers (6.4 miles) south of the community.

DATES: Effective January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418-2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05-244, adopted December 14, 2005, and released December 16, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor,

Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, D.C. 20554, telephone 1-800-378-3160 or <http://www.bcpiweb.com>. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing St. Augustine, Channel 231C3 and by adding Fruit Cove, Channel 231C3.

Federal Communications Commission.

John A. Karousos,
Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06-40 Filed 1-3-06; 8:45 am]

BILLING CODE 6712-01-U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 041108310-5347-04, I.D. 100104H]

RIN 0648-AS78

List of Fisheries for 2005

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is publishing its final List of Fisheries (LOF) for 2005, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2005 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 (TRP) requirements.

DATES: This final rule is effective February 3, 2006.

ADDRESSES: Registration information, materials, and marine mammal reporting forms may be obtained from several regional offices. See **SUPPLEMENTARY INFORMATION** for a listing of offices where these materials are available.

For collection-of-information requirements subject to the Paperwork Reduction Act, please contact Office of Management and Budget, Attn: David Rostker, fax: 202-395-7285 or David_Rostker@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or general questions on the LOF, please contact the following NMFS staff:

Kristy Long, Office of Protected Resources, 301-713-2322;
David Gouveia, Northeast Region, 978-281-9300;
Vicki Cornish, Southeast Region, 727-824-5312;
Cathy Campbell, Southwest Region, 562-980-4060;
Brent Norberg, Northwest Region, 206-526-6733;
Chris Yates, Pacific Islands Region, 808-973-2937;
Bridget Mansfield, Alaska Region, 907-586-7642.

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

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298, Attn: Marcia Hobbs;
NMFS, Southeast Region, 263 13th Avenue S., St. Petersburg, FL 33701, Attn: Teletha Mincey;
NMFS, Northwest Region, Sustainable Fisheries Division, 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; or
NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802.
NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani

Boulevard, Suite 1110, Honolulu, HI 96814, Attn: Lisa Van Atta.

What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals occurring in each fishery (16 U.S.C. 1387 (c)(1)). The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and TRP requirements. NMFS must reexamine the LOF annually, considering new information in the Stock Assessment Reports 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 the Category a Fishery is Placed in?

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 at 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. Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classifications.

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 final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Since 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 or mortality qualifies for Category II by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

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

This final rule includes two 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.

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 from NMFS in

order to lawfully incidentally take a marine mammal in a commercial fishery. 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?

Fishers must register with the Marine Mammal Authorization Program (MMAP) by contacting the relevant NMFS Regional Office (see ADDRESSES) unless they participate in a fishery that has an integrated registration program (described below). Upon receipt of a completed registration, NMFS will issue vessel or gear owners physical evidence of a current and valid registration that must be displayed or in the possession of the master of each vessel while fishing in accordance with section 118 of the MMPA (16 U.S.C. 1387(c)(3)(A)).

What is the Process for Registering in an Integrated Fishery?

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to submit registration or renewal materials or pay the \$25 registration fee. Following is a list of integrated fisheries and a summary of the integration process for each Region. Fishers who operate in an integrated fishery and have not received registration materials should contact their NMFS Regional Office (see ADDRESSES).

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA:

1. All Alaska Category II fisheries;
2. All Washington and Oregon Category II fisheries;
3. Northeast Regional fisheries for which a state or Federal permit is required. Individuals fishing in fisheries for which no state or Federal permit is required must register with NMFS by contacting the Northeast Regional Office (see ADDRESSES); and
4. Southeast Regional fisheries for which a state or Federal permit is required. Southeast fisheries include all North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Puerto Rico fisheries. Individuals fishing in fisheries for which no state or Federal permit is required must register with NMFS by contacting the Southeast Regional Office (see ADDRESSES).

How Do I Renew My Registration Under the MMPA?

Regional Offices, except for the Northeast and Southeast Regions, annually send renewal packets to previously registered participants in Category I or II fisheries. However, it is the responsibility of the fisher to ensure that registration or renewal forms are completed and submitted to NMFS at least 30 days in advance of fishing. Individuals who have not received a renewal packet by January 1 or are registering for the first time should request a registration form from the appropriate Regional Office (see ADDRESSES).

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 fisher (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. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

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

Am I Required to Comply With Any TRP Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable TRPs.

Sources of Information Reviewed for the Proposed 2005 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the Stock Assessment Reports (SARs) for all observed fisheries to determine whether changes in fishery classification were warranted. NMFS SARs are based on the best scientific information available, including information on the level of serious injury and mortality of marine mammals that occurs incidental to

commercial fisheries and the PBR levels of marine mammal stocks. NMFS also reviewed other sources of new, relevant information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that is not included in the SARs.

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 the Caribbean. The SRGs were created by the MMPA to review the science that is applied to the SARs, and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

The LOF for 2005 was based, among other things, on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), the final SARs for 2002 (68 FR 17920, April 14, 2003), the final SARs for 2003 (69 FR 54262, September 8, 2004), the final SARs for 2004 (70 FR 35397, June 20, 2005), and the draft SARs for 2005 (70 FR 37091, June 28, 2005).

Comments and Responses

NMFS received 14 comment letters on the proposed 2005 LOF (69 FR 70094, December 2, 2004) and draft environmental assessment (EA) on the LOF classification process (70 FR 49902, August 25, 2005) from environmental, commercial fishing, and federal and state interests. However many comments focused on issues outside the scope of the LOF and are not responded to in this final rule. Any comments received outside the public comment periods (December 2, 2004 through March 4, 2005 and August 25, 2005 through October 24, 2005) are not responded to in this final rule.

General Comments

Comment 1: One commenter felt that NMFS does not allow the public enough time to comment on the LOF.

Response: NMFS believes that the public comment period on the 2005 LOF was more than adequate. The comment period was originally open for 30 days from December 2, 2004 to January 3, 2005, extended for an additional 60 days until March 4, 2005, and then reopened for 60 days from August 25 to October 24, 2005. Therefore, the public comment period on this action was a total of 150 days.

Comment 2: One commenter feels that the LOF category definitions are arbitrary and capricious.

Response: When Congress amended the MMPA in 1994, section 118 specified that commercial fisheries were to be classified in one of three categories, i.e., those with frequent, occasional, or, a remote likelihood of or no known incidental mortality and serious injury of marine mammals. The Secretary of Commerce, through NMFS, proposed and finalized regulations to implement the 1994 amendments (60 FR 31666, June 16, 1995; 60 FR 45086, August 30, 1995). During the development of the draft regulations to implement MMPA section 118 (before NMFS developed the proposed rule), NMFS held several working sessions and solicited written comments on aspects of section 118, such as fishery classification criteria and options for classifying fisheries. NMFS also drafted and finalized an EA to analyze the effects of the proposed regulations on the environment and the public (NMFS, 1995). In developing the process for classifying fisheries, NMFS solicited and considered public input as well as analyzed the effects of these actions on the public. Therefore, NMFS does not agree that the classification system is arbitrary or capricious.

Comment 3: One commenter believes the MMAP registration fee is too low.

Response: In MMPA section 118(c)(5)(C), it states that the Secretary is authorized to charge a fee for granting an authorization to incidentally injure or kill marine mammals, however, that fee is not to exceed the administrative costs incurred in granting the authorization. Currently, NMFS charges \$25 to cover administrative costs. If NMFS has integrated the MMPA authorization with other permits or authorization processes, the fee is waived.

Comment 4: Generally, NMFS retains information on all species/stocks incidentally injured or killed on the LOF for 5 years, similar to the stock assessment process. One commenter requested that NMFS retain information on all species/stocks incidentally injured or killed on the LOF, even if the interaction occurred more than 5 years ago.

Response: The LOF is intended to inform the public of the current status of commercial fisheries with respect to marine mammal serious injuries and mortalities. It was never intended that the LOF serve as a comprehensive document detailing a particular fishery's history in terms of marine mammal interactions. When NMFS makes changes to fishery classifications, number of vessels, or species/stocks incidentally injured or killed, there is detailed information in the SARs.

Therefore NMFS does not believe that this information also needs to be duplicated in the LOF.

Comment 5: One commenter recommended that NMFS reclassify all trawl fisheries as Category I fisheries.

Response: NMFS classifies fisheries according to the level of marine mammal serious injury and mortality incidental to commercial fisheries and by using a two-tiered, stock-specific approach. Please see **SUPPLEMENTARY INFORMATION** for the classification criteria. Only trawl fisheries that met the criteria for a Category I fishery would be included in that category.

Comment 6: One commenter recommended that NMFS include the level of observer coverage in each fishery that is proposed for reclassification in the LOF. Further, the commenter requested that NMFS include the coefficients of variation for each estimate of serious injury and mortality to illustrate how thresholds between categories are exceeded, and therefore, illustrate the basis for reclassifications.

Response: NMFS will consider this comment throughout the 2006 LOF development process.

Comment 7: NMFS received several comments on information contained in individual SARs, specifically regarding the calculated PBR levels for marine mammal stocks, which are used in developing the LOF. Some commenters identified concerns with either the 2003 SARs or the 2005 draft SARs, which were available for public comment at the same time as the 2005 proposed LOF through a separate Federal Register document (70 FR 37091, June 28, 2005).

Response: NMFS will address all comments regarding the development of draft SARs for 2005 as part of the comments received during the comment period on the Notice of Availability of the final SARs (closed September 26, 2005).

Comments on Fisheries in the Pacific Ocean

Comment 8: Several commenters supported the proposed reclassification of the California/Oregon drift gillnet fishery.

Response: NMFS has reclassified the California/Oregon drift gillnet fishery from Category II to Category I in this final rule.

Comment 9: Several commenters supported the proposed reclassifications of the following fisheries: AK Bering Sea/Aleutian Islands (BSAI) flatfish trawl, AK BSAI pollock trawl, AK BSAI Greenland Turbot Longline, AK BSAI Pacific cod longline, and AK Bering Sea sablefish pot.

Response: NMFS has reclassified all five fisheries from Category III to Category II in this final rule.

Comment 10: One commenter suggested that NMFS base estimated serious injury and mortality levels on an average of the full time-series of observations, instead of on the most recent 5 years of observations.

Response: There are benefits and drawbacks to using the full time-series of data in lieu of the most recent 5 years of data on marine mammal mortality and serious injury. Using a longer time series may increase the sample size (number of serious injury/mortality events) and thus improve the precision of the estimated bycatch level. However, fisheries change over time, so it may not be appropriate to average a recent estimated bycatch level with a bycatch level from 10 or more years ago. Further, the use of a 5-year running average implies that, if a level of take occurs in year 1 that results in reclassification of a commercial fishery, and that is the only take that occurs, after 6 years, that take will "drop off" the record and the fishery would be a candidate for reclassification to a lower category. In recent years, fisheries have changed classification from Category II to III when new information indicated that takes were no longer occurring. Routinely using a longer time-series of data could delay a reclassification.

In the specific case of federally-managed Alaska groundfish fisheries, NMFS has determined that the most current 5 years of data should be used to classify commercial fisheries for two reasons. First, changes in commercial fishing operations due to recent management actions resulted in the fisheries being prosecuted under very different conditions than those in the 1990s. Second, in 2004, NMFS changed the identification of Alaska commercial fisheries from gear type and area, to gear type, area, and target species. Because of how data were collected on commercial fisheries, records prior to 1998 cannot be separated in this way.

Comment 11: One commenter felt that NMFS used marine mammal bycatch data in the LOF analysis that were not characteristic of the current fisheries.

Response: NMFS agrees that marine mammal interaction data used to classify commercial fisheries should be as current as is practicable to ensure that the estimated levels of serious injury and mortality reflect current fishing practices and environmental conditions. In some cases, and particularly for some Alaska State fisheries, information on marine mammal mortality and serious injury is quite dated. Currently there are eleven

Category II state-managed fisheries in Alaska on the LOF. Since 1990, six Category II fisheries have been observed. Of those, two have been reclassified from Category II to Category III because the observer program documented a very low level of marine mammal serious injuries and mortalities that occurred incidental to those fisheries. Seven state-managed Category II fisheries have never been observed. To date, only one fishery has been observed at a time, each for a 2-year period, and often with one or more years during which observer programs were not able to be implemented. Ideally, NMFS would observe each of these fisheries every 5 years to ensure data quality and timeliness. However, without new information on previously observed fisheries, NMFS must rely on the best available information, which in some cases is dated.

Comment 12: One commenter believes it is not appropriate for NMFS to use data from observed vessels to estimate the level of marine mammal serious injury and mortality on unobserved vessels during unobserved periods.

Response: Data collected by observers are extrapolated to the fleet, unless specific information is available that provides a reliable basis for changing this strategy. The BSAI and GOA fisheries were segregated in the 2004 LOF on the basis of a separation of time, area, and target species based on some assumptions that incidental serious injury and mortality of marine mammals in these fisheries (as segregated) may vary. As a result, NMFS believes that if bycatch levels differ between these fisheries, underlying causes for those takes may be easier to discern within a fishery. This segregation also eliminates from further investigation those fisheries in which bycatch levels are of little or no concern.

Therefore, NMFS disagrees that it is inappropriate to use observer data from an observed vessel to estimate the level of marine mammal serious injury and mortality on a vessel that does not carry an observer but is fishing with the same gear, targeting the same species, and fishing in the same general environment. Observer programs are the best source of information on the level of serious injury and mortality that occurs incidental to a commercial fishery, despite the fact that an assumption must be made that the level of serious injury and mortality across the whole fleet will be similar to the level of serious injury and mortality on observed vessels within that fleet.

One advantage of delineating the Alaska groundfish fisheries into

different fisheries based on gear type, area, and target species is that NMFS is even more confident that levels of marine mammal bycatch on an observed vessel can be extrapolated to the unobserved portion of the fleet. In addition, the North Pacific Fishery Management Council's Scientific and Statistical Committee (SSC) commented that they are comfortable with extrapolating bycatch estimates from observed to unobserved portions of the fishery, as stated in the minutes of the SSC meeting on February 7-9, 2005: "The SSC is comfortable with the approach to extrapolate estimates of takes from the observed portion of a fishery to the unobserved portion of the same fishery...". Concerns raised by the SSC at the end of that sentence are addressed in the response to Comment 19.

Comment 13: When marine mammal takes occur in an area where very similar marine mammal stocks overlap in both space and time, NMFS does not assign serious injury/mortality events to a particular marine mammal stock. Instead, the LOF classification determination with respect to each marine mammal stock allows for the possibility that the mortality-serious injury event involved animals from that sub-unit. Some commenters believe NMFS is "double-counting" a single mortality-serious injury event. Commenters suggested an alternative approach such as weighting serious injury and mortality events by the probability that they involved marine mammals from a particular stock.

Response: The issue of so-called "double counting" of mortalities and incorrectly assigning a marine mammal mortality/serious injury event to a particular stock was raised by public commenters with respect to two situations: mortalities of killer whales in an area where transient and resident killer whale stocks overlap, and mortalities/serious injuries of humpback whales in Hawaii, where multiple stocks overlap on the humpback whale breeding grounds. The following rationale applies to both situations.

Assigning a commercial fishery incidental take event to a particular stock can be difficult when two marine mammal stocks that cannot be readily differentiated by observers overlap in space and time. There are three ways to assign an event to a stock when there is stock overlap: genetics, pro-rating (or "weighting") the take rate based on the abundance and distribution of each stock in that area, and independently assessing the impact of the take as if it could have resulted from either stock.

Assignment of a serious injury/mortality event to a particular stock in an area of overlap is most directly accomplished through genetics analysis of the dead marine mammal. Many genetics samples have been collected from marine mammals that have died incidental to Alaska commercial fisheries; analyses of these data can greatly assist in determining what stock(s) of marine mammals are impacted by fisheries. For some marine mammal stocks in U.S. waters, a serious injury/mortality event can be pro-rated to two different stocks if the distribution and abundance of both stocks in a particular area is well understood. However, if neither the abundance nor the distribution of both stocks in the area where the take occurred is known, pro-rating is not possible.

If NMFS cannot use pro-rating or genetics techniques to assign a particular serious injury/mortality event to a specific stock in an area of known stock overlap, then the agency assesses what LOF category would result if the take came from either stock. The impact of the single take to each possible source stock is independently reviewed for each stock by conducting separate Tier 2 analyses that compare that take to the PBR level of stock A or the PBR level of stock B. In all cases in which this situation occurred in the proposed 2005 LOF, the resulting LOF fishery categories were the same when the take was compared to either stock's PBR level. However, this may not always be the case. If the results of the Tier 2 analyses had resulted in possible classification of a fishery in one of two categories, NMFS would generally take a precautionary approach and place the fishery in the higher level category. There are no situations in which a take that might be assigned to Stock A is added to a take that might be assigned to Stock B.

Comment 14: To arrive at an assessment of incidental marine mammal mortality and serious injury, instead of double-counting takes, one commenter suggested NMFS do one of two things: (1) either reduce the mortality and serious injury by 50 percent, or (2) combine the population estimates of the affected stocks so that the actual take levels are compared to the actual total population. One commenter provided an alternative assessment of incidental marine mammal serious injury and mortality rates for combined populations of resident and transient killer whale stocks, and combined western and central humpback whale stocks.

Response: See the response to Comment 13 regarding the issue of so-

called "double counting". Stocks that are known to be genetically, demographically, and behaviorally distinct, such as resident and transient killer whale stocks, and western and central stocks of humpback whales, should not be combined for assessment of incidental mortality and serious injury. This approach is counter to the provisions of the MMPA and would greatly increase the probability that incidental mortality could have a negative impact on a stock without detection. If the source stock of an incidentally killed marine mammal is truly unknown, NMFS will continue the practice of assessing the possible impacts of that mortality on all reasonable marine mammal stocks that are known to occur in that area. NMFS will strive to reduce the number of situations where this is necessary by continuing to collect and analyze data on marine mammal abundance, distribution, and genetics of incidentally taken animals.

Comment 15: One commenter believes a measure of fishing effort is needed in order to extrapolate observed takes to total estimated takes. The commenter notes that NMFS has used fish catch, in metric tons, as a proxy for effort because NMFS claims that effort is unknown. Two commenters suggested that something other than catch (e.g., numbers of days fished, hooks used) be used to measure effort.

Response: Information on effort as measured by the number of hooks, number of hauls, days fished, etc. is available for vessels that are observed. However, there is no such measure for unobserved vessels. Because all vessels must report catch, that is the only data that can be used for all vessels, seasons, and areas to determine relative levels of effort. Should another measure of effort become available that can be used for all vessels, seasons, and areas, NMFS will consider modifying the analytical approach.

Comment 16: One commenter believes the NMFS' analysts who calculate the mortality and serious injury rates should re-examine assumptions made about the statistical distribution from which the sample is drawn (i.e., discrete versus continuous, symmetric versus asymmetric).

Response: Assumptions about the statistical distribution will affect the 95-percent confidence intervals around a mean, but will not affect the mean annual level of take, which is the value used to determine in which category a fishery should be placed in the LOF. NMFS has re-examined how the 95-percent confidence limits should be calculated, and has decided that using

a natural log-transformation (Burnham et al., 1987), which uses the original calculated coefficients of variation is a better approach. This approach will yield positive, non-symmetric confidence limits for the bycatch estimation.

Comment 17: One commenter notes that estimates of takes are rounded to the nearest whole number of animals and suggests that NMFS state these rounding rules and adjust confidence limits.

Response: Estimates of takes in each strata are calculated by exact decimals, the decimal strata estimates are added to develop annual take estimates and 5-year averages. In future technical reports, NMFS will report estimates and confidence limits to two decimal places. Summary tables may, at times, show integers for presentation purposes. In these cases, NMFS will follow common rounding practices: if the number ends in a value less than 5, the estimate will be rounded down; if the number ends in a value greater than or equal to 5, the number will be rounded up.

Comment 18: One commenter notes that in certain cases, unobserved takes reported by the vessel crew on a monitored ship was added to an estimated take level using observed takes. The commenter believes this is problematic and alters the statistical properties of the take estimates.

Response: Takes that are not seen by the observer on an observed trip are not included in the estimates of total take. For instance, in 2001, there was one observed take of a killer whale in a monitored haul in the BSAI flatfish trawl fishery; this extrapolated to an estimate of 2 killer whales taken in that year. In 2001, an observer reported a single killer whale mortality and provided the following comment: "Skipper reported seeing a large pool of bright red blood emerge from prop. into wake following a loud noise accompanied by a shudder of the vessel. I thought it had been a raising of trawl doors, but we weren't hauling back. This pod had been feeding regularly on our discards." Although this description is conceptually identical to other situations where killer whales were killed by a propeller strike, because this interaction was not witnessed by the observer, it was not included in the estimate or used to justify a change in classification on the LOF.

Comment 19: Two commenters identified some confusion about the analytical techniques used to extrapolate from observed serious injury/mortality events to estimates of total serious injury mortality. Commenters are concerned that

mortality/serious injury events that were seen, but that did not occur in monitored hauls (so-called "unobserved takes") are included in the extrapolation made to develop an estimated level of serious injury and mortality.

The commenter was also concerned that the estimated number of takes listed in the SARs cannot be directly calculated simply by using the effort information also included in the SARs.

Response: The fishing effort and marine mammal bycatch data for the groundfish fisheries of Alaska are partitioned into hundreds of strata differentiated by year, statistical fishing area (517, 610, etc.), fishing gear (trawl, longline, jig, and pot), fishery target (pollock, flatfish, sablefish, etc.), vessel type (processor, mothership, or catcher-only vessel), and four-week fishing period throughout the year (Catch Accounting System or Blend data weeks). Estimates of bycatch are calculated for each individual stratum and the decimal values of the resulting estimates/variance for all strata are then summed to yield the regional/annual estimates. The effort information included in the SARs is the pooled effort. The pooled effort shown in the SAR cannot be directly used to calculate the estimated bycatch from the observed bycatch because effort in each strata, not the pooled effort, is used to calculate an estimated bycatch rate.

If there are no observed marine mammal serious injury/mortality events in either monitored or unmonitored sets in a particular strata, NMFS assigns "zero" as the level of bycatch for that strata. In this respect, the final regional estimates are conservative. Mortalities/serious injury events actually seen by observers in designated unmonitored sets are only added to the calculated ratio estimates in two circumstances: (1) there were no observed takes in designated monitored sets (zero variance), but there were events seen and reported by either the observer, the crew, or the captain, or (2) the calculated rounded ratio estimate is lower than total number mortalities actually seen by observers in all sets on NORPAC cruises. In both cases, the added mortalities are not double counted, but known minimums are corrected. Reported takes that do not occur in monitored hauls are never used in an extrapolation to a total estimated take; in the two cases identified above, they are simply added to the calculated estimates based on monitored hauls.

Comment 20: One commenter noted that the fishery-wide estimate of total take includes both estimates from observer programs and information from logbooks. The commenter believes this

procedure double counts interactions, artificially and incorrectly exaggerating the number of takes.

Response: The MMPA requires that the SARs contain an estimate of total fishery-related mortality and serious injury. Clearly, because not all commercial fisheries are observed, this total estimate of fishery-related mortality and serious injury will combine different sources of information, such as that from observer programs, logbooks, and stranding information. However, only one source of data is used for each fishery to avoid including the same take more than once in the total estimate of take. For instance, because the BSAI pollock trawl fishery is observed, only observer data are used to estimate levels of serious injury and mortality for this fishery. If there is an existing logbook report on a particular event in this fishery, it would be ignored. In contrast, for fisheries never observed, logbook data (called "self reports" in the SARs) or stranding data are used as a minimum estimate of the level of mortality/serious injury.

NMFS disagrees that the statistical properties of combining data in this manner may be problematic. Data from logbooks or strandings are never combined with observer data. Data from logbooks or strandings are only used to determine a minimum estimate of the level of mortality/serious injury in a particular fishery when no observer data are available for that fishery. While the SARs do include a coefficient of variation for the total annual mortality level for all fisheries, these coefficients of variation reflect only the confidence in the observer data.

Comment 21: One commenter notes that the LOF does not take into account injuries or mortalities of marine mammals that occur as a result of entanglement in marine debris. In addition, the analysis does not take into account the cumulative effects of all mortality sources.

Response: This is correct. The MMPA and the implementing regulations for section 118 describe a process for classifying U.S. commercial fisheries based on the level of serious injury and mortality incidental to those fisheries relative to stock-specific PBR levels, and provide a means to manage incidental takes by commercial fisheries. Cumulative impacts of all possible sources of mortality are not specifically assessed or managed in the LOF process.

Comment 22: The commenter supports reclassification of the five Alaska fisheries.

Response: NMFS has reclassified these fisheries.

Comment 23: One commenter suggested that NMFS review the monitoring and management scheme of Alaska trawl fisheries to ensure adequate protection of humpbacks.

Response: NMFS believes that the monitoring and management of Alaska trawl fisheries is more than sufficient to ensure adequate protection of humpback whales given the high observer coverage and low level of annual serious injury and mortality of humpback whales in these fisheries.

Comment 24: One commenter noted that the timelines for publishing the SARs and the LOF do not match up, so old data are used for the classifying fisheries on the LOF because of the time it takes to incorporate new data into the SARs.

Response: The timing of the annual publication of the marine mammal SARs and the LOF are not linked. The SARs are reviewed annually for stocks listed as endangered or threatened under the ESA, and depleted under the MMPA. Stocks not listed as endangered, threatened, or depleted are updated on a 3-year cycle, or when significant new information becomes available. However, because new information on abundance, rates of population increase, or stock structure typically become available only every few years, it is reasonable to rely on abundance information and PBR levels that are a few years old.

In contrast, an analysis of the levels of serious injury and mortality of all marine mammal stocks incidental to commercial fisheries is updated every year for all stocks for the purpose of categorizing fisheries in the LOF. The most recent five years of data are used where available. However, for observer data, there is generally a 2-year time lag between when the most recent data were collected and the year for which the new LOF is proposed. For example, data from the North Pacific Groundfish Observer Program used in the analysis for the 2005 proposed List of Fisheries was collected between 1999–2003. The reason for this time lag is that the year in which the data were collected must be a completed year to assure that all data from all fisheries were available for the analysis. Thus, data collected in calendar year 2003 are analyzed in 2004. Further, the proposed LOF is generally proposed in the year prior to the year it will take effect. The 2005 proposed List of Fisheries was proposed in 2004.

The abundance, stock structure, and PBR level information in the most current published SAR is used in the

analyses for each annual proposed LOF. Newer abundance information may be available between the publication of the proposed and final LOFs, but NMFS does not typically update analyses between the proposed rule and final LOFs, because this is a time consuming, annual process which will be repeated the following year. Additionally, NMFS cannot finalize any changes that have not already been proposed in the *Federal Register* and available for public comment. Availability of new information is a continuous process, and delays to in publishing the LOF would be endless if the agency updated the LOF every time new information was available. To avoid such delays the newest available information can be incorporated into the next proposed LOF the following year.

NMFS may, as it is doing for this LOF, use more current fishery-related mortality data than are included in the most recent published SAR. For this LOF, NMFS relied upon a draft report that was circulated to the public in February 2005.

Comment 25: One commenter questioned why NMFS uses a lower percentage when calculating how observed takes extrapolate to total takes if some fisheries have observer coverage levels of 100-percent. For example, the participants in the hook and line fishery for turbot are all catcher-processors and generally have 100-percent observer coverage. All vessels in this fishery over 125ft (38.1m) have 100-percent observer coverage, and vessels between 60ft (18.28m) and 125ft (38.1m) have 30-percent observer coverage; because the turbot fleet only targets turbot once per year, and an observer is required during that one trip, effectively the observer coverage is 100 percent. Further, the November 2000 Biological Opinion from the ESA section 7 consultation on the fishery shows that 100 percent of the turbot hook and line fishery is observed. Therefore, the SARs are incorrect in stating that the observer coverage for this fishery is between 27–80 percent.

Response: For the analysis of marine mammal serious injury/mortality incidental to the Alaska groundfish fisheries, observer coverage is measured as the percent of the total catch that is monitored by observers. Thus, there is a difference between the statement "100-percent of the fishery is observed" and the actual percent of the catch that is monitored by observers. Even in a fishery where every vessel carries at least one observer, there are times when observers must sleep or eat. Thus, not all catch in all hauls or sets on an observed vessel are actually monitored by an observer. The highest observer

coverage in the groundfish fisheries of Alaska, in terms of the percent of the catch that is monitored, is approximately 80-percent.

Comment 26: One commenter noted that the BSAI turbot longline fishery has historically been small and various sources of information document that participation has declined in recent years, in part due to killer whale predation on longline catch. The commenter believes the fishery should remain in Category III because the only killer whale take occurred in 1999, so using the most recent 5 years of data (2000–2004) results in a mean annual mortality rate of 0.0 killer whales per year.

Response: The observer data set analyzed for the 2005 LOF for the Federal fisheries were collected from 1999 through 2003. These data and the Tier 2 analysis indicate that the BSAI turbot fishery meets the threshold for Category II for the 2005 LOF. The 2006 LOF will analyze data collected from 2000 through 2004. The BSAI turbot fishery will be proposed to be placed in the appropriate category for the 2006 LOF according to the Tier 2 analysis using those data. The LOF is an annual process, and the category to which a fishery is assigned may vary from year to year. See the responses to Comments 15 and 24 for additional explanation on the timing of the LOF process and the data used in the analyses.

Comment 27: One commenter believes NMFS has incorrectly estimated the number of vessels participating in the turbot fishery; the number is too high.

Response: A target is calculated as the dominant retained species for a vessel by week, gear, and reporting area. In 1999, 31 catcher processors targeted Greenland turbot. Effort in the Greenland turbot fishery declined over the years to 12 catcher processors targeting Greenland turbot in 2003. Table 1. List of Fisheries Commercial Fisheries in the Pacific Ocean will be corrected in the 2006 LOF.

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

Comment 28: Several commenters supported the proposed reclassification of the Mid-Atlantic and Northeast bottom trawl fisheries from Category III to Category II.

Response: NMFS has reclassified both the Mid-Atlantic and Northeast bottom trawl fisheries in this final rule.

Comment 29: Two commenters believe NMFS should classify the Mid-Atlantic bottom trawl fishery in Category I instead of Category II as proposed. One commenter feels NMFS

should classify the fishery in Category I until the agency can determine whether short-finned or long-finned pilot whales are being seriously injured or killed incidental to this fishery. The commenter is concerned that grouping the two species together when estimating abundance and mortality may elevate risk if one species is less abundant than the other, thus disproportionately estimating serious injury and mortality.

Response: Because the two species of pilot whales that occur in the Atlantic are very similar in appearance, fishery observers and scientists cannot reliably visually identify pilot whales at the species level. Therefore, at this time, it is not possible to separately estimate total fishery-related serious injury and mortality of long-finned and short-finned pilot whales. The Atlantic Scientific Review Group advised NMFS to adopt the risk-averse strategy of assuming that either species might have been subject to the observed fishery-related serious injury and mortality. Therefore, NMFS cannot conduct a tier-analysis separately for each species because we do not have species-specific abundance estimates or PBR levels for long finned and short-finned pilot whales.

NMFS is currently analyzing biopsy samples taken during 2004 and 2005 abundance surveys to obtain more information on pilot whale stock structure and range. NMFS expects to have these estimates available in the 2007 SARs. Additionally, NMFS is working towards having observers obtain biopsy samples of animals taken incidental to commercial fishing operations.

At this time, NMFS does not have adequate information to reclassify this fishery in Category I, but will revisit the tier analysis as new information becomes available.

Comment 30: One commenter supported the proposed removal of the Gulf of Maine/Bay of Fundy stock of harbor porpoise, Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins from the list of species/stocks incidentally injured or killed by the Long Island Sound inshore gillnet fishery.

Response: NMFS has removed these three stocks because NMFS has not documented any marine mammal serious injuries or deaths incidental to the Long Island Sound inshore gillnet fishery in recent years.

Comment 31: One commenter objected to the proposed name changes for the Delaware Bay inshore gillnet fishery (proposed as “Delaware River

inshore gillnet fishery”) and the Mid-Atlantic coastal gillnet fishery (proposed as “Mid-Atlantic gillnet fishery”). The commenter feels the fisheries as named and described do not adequately reflect gillnetting in Delaware Bay. Further, the proposed changes would put undue burden on fishermen that would now fall under the Mid-Atlantic gillnet fishery. The commenter requested that all gillnetting in Delaware Bay be included on the LOF in Category III as the “Delaware Bay inshore gillnet fishery”.

Response: NMFS would like to clarify that the proposed name changes do not change the designation of any gillnet fisheries operating in Delaware Bay. The 1994 final LOF (59 FR 43820, August 25, 1994) classified the current Category III Delaware Bay inshore gillnet fishery as those gillnet fisheries operating north of a line drawn from the southern point of Nantuxent Cove (mouth of Cedar Creek), NJ to the southern boundary of Bombay Hook National Wildlife Refuge at Kelley Island (Port Mahon), DE. Gillnet fisheries operating south of this line have always been included under the Mid-Atlantic gillnet fishery (previously the “Mid-Atlantic coastal gillnet fishery”), a Category I fishery based on serious injuries and mortalities of harbor porpoise and bottlenose dolphins incidental to the fishery. NMFS has documented strandings of these stocks inside Delaware Bay as well as up into the Delaware River. The previous name, “Delaware Bay inshore gillnet fishery” is potentially misleading because it implies all fisheries operating throughout Delaware Bay are considered as Category III fisheries. Therefore, NMFS has changed the name of the fishery to the “Delaware River inshore gillnet fishery”.

The Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations apply to waters inside Delaware Bay between the COLREGS and the line defined above between Nantuxent Cove and Kelley Island. NMFS would like to clarify an error in the proposed 2005 LOF (69 FR 70100, December 2, 2004) under the heading “Delaware Bay Inshore Gillnet Fishery”, that stated, “Moreover, gillnet fisheries operating inland of the COLREGS would be placed in the Delaware River inshore gillnet fishery and would not be subjected to ALWTRP regulations.” The word COLREGS should be substituted with the phrase “southern point of Nantuxent Cove, NJ to the southern end of Kelley Island, Port Mahon, DE”.

Comment 32: One commenter disagreed with NMFS’ proposed reclassification of the Northeast bottom trawl fishery from Category III to

Category II and feels it is premature and scientifically unfounded. The commenter questioned NMFS' abundance estimates for Atlantic white-sided dolphins.

Response: To estimate Atlantic white-sided dolphin abundance, NMFS used established scientific methods that were reviewed and accepted by the Atlantic Scientific Review Group; this estimate is based on the most recent and reliable available data. At the time NMFS conducted the Tier analysis, no mortality estimate was available for the Western North Atlantic stock of white-sided dolphins taken incidental to the Northeast bottom trawl fishery. Therefore, in the Tier analysis, NMFS used observer data from 2003, during which 12 animals were observed seriously injured or killed incidental to the fishery. This count represents the number of mortalities actually recorded by fishery observers and have not been expanded to account for the portion of the fishery that was not observed. In other words, if NMFS had extrapolated the number of mortalities across the entire fishery, the number of mortalities would be higher. Because NMFS only had one year of data, the agency used this data in the Tier analysis. These 12 observed serious injuries and mortalities represent 3.3 percent of the stock's PBR level (364). Because this level of mortality and serious injury exceeds 1 percent but is less than 50 percent of the stock's PBR level, NMFS is classifying this fishery as a Category II fishery.

Comment 33: One commenter requested that NMFS not finalize the proposed inclusion of harbor porpoise on the list of species/stocks incidentally injured or killed in the Northeast bottom trawl fishery because the animal was badly decomposed and the trawl duration was five hours.

Response: NMFS agrees and has not included the Gulf of Maine/Bay of Fundy stock of harbor porpoise on the list of species and stocks injured or killed incidental to the Northeast bottom trawl fishery.

Comment 34: One commenter requested NMFS to remove the Western North Atlantic stocks of offshore bottlenose and striped dolphins from the list of species and stocks seriously injured or killed in the Northeast bottom trawl fishery, as there were no documented serious injuries or mortalities between 2000 and 2004.

Response: NMFS agrees and will propose removing these stocks in the 2006 LOF.

Comment 35: Two commenters urged NMFS to reclassify the Gulf of Mexico blue crab trap/pot fishery in Category II

and the Gulf of Mexico menhaden purse seine fishery in Category I.

Response: At this time, the available information supports the current classifications for these fisheries. NMFS has no new information with which to evaluate and reclassify these fisheries. As stated in the 2004 final LOF (69 FR 48407, 48414, August 10, 2004), NMFS believes it is necessary to investigate stock structure of bottlenose dolphins in the Gulf of Mexico and intends to reevaluate these fisheries' classification as new information becomes available.

Comments on the LOF EA

Comment 36: Several commenters recommended that NMFS revise the 1995 EA, which analyzed the LOF classification process.

Response: NMFS drafted a revised EA on the process for classifying U.S. commercial fisheries according to the level of marine mammal serious injury and mortality incidental to each fishery in August 2005 and solicited public comments on the document from August 25 to October 24, 2005. This EA was finalized in December 2005.

Comment 37: Several commenters oppose the process of classifying fisheries on the LOF.

Response: NMFS is required by MMPA section 118 to classify fisheries. Please see the SUPPLEMENTARY INFORMATION in this final rule.

Comment 38: One commenter believes the EA is deficient because it only focuses on the thresholds for categorizing fisheries. The commenter feels the EA should consider how minimum population estimates (Nmin) and recovery factors (Rf) are defined as well as how serious injuries or mortalities are assigned to a particular marine mammal stock.

Response: Nmin and the Rf, while related to the LOF classification scheme, are not actually part of the LOF process. Nmin is defined in MMPA section 3(27) as an estimate of the number of animals in a stock that is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information and provides reasonable assurance that the stock size is equal to or greater than the estimate. Nmin is one component of the equation used to calculate PBR for a particular marine mammal stock. PBR is also defined in MMPA section 3(20). A recovery factor of between 0.1 and 1.0 is included in the PBR equation.

Pursuant to MMPA section 117, NMFS estimates PBR levels for each marine mammal stock according to the definitions in the MMPA. NMFS reports these PBR levels in individual SARs.

Similar to estimating PBR, assigning serious injuries and mortalities to a particular stock also occurs during the stock assessment process. Each SAR is vetted through the appropriate SRG, who in turn reviews the reports based on their scientific expertise. Draft SARs are also available for public comment.

The process for estimating PBR (i.e., establishing Nmin and recovery factors) under MMPA section 117 is a separate process that occurs before such information is used in the process for classifying fisheries on the LOF under MMPA section 118. This is also true for assigning serious injuries and mortalities to individual stocks. Members of the public who wish to comment on elements of the stock assessment process would need to do so during the comment period on draft SARs.

Summary of Changes to the LOF for 2005

The following summarizes changes to the LOF in 2005 in fishery classification, fisheries listed on the LOF, the number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery. The LOF for 2005 is identical to the LOF for 2004 with the following exceptions.

Commercial Fisheries in the Pacific Ocean

Fishery Classification

The "CA/OR Thresher Shark/Swordfish Drift Gillnet (≥ 14 in. Mesh) Fishery" is elevated from Category II to Category I.

The following fisheries are elevated from Category III to Category II: "AK Bering Sea, Aleutian Islands Flatfish Trawl Fishery," "AK Bering Sea, Aleutian Islands Pollock Trawl Fishery," "AK Bering Sea, Aleutian Islands Greenland Turbot Longline Fishery," "AK Bering Sea, Aleutian Islands Pacific Cod Longline Fishery," and "AK Bering Sea Sablefish Pot Fishery."

Fishery Name and Organizational Changes and Clarifications

The "Bering Sea, Aleutian Islands Cod Longline Fishery" is renamed the "Bering Sea, Aleutian Islands Pacific Cod Longline Fishery."

Number of Vessels/Persons

The estimated number of participants in the "OR Swordfish Floating Longline Fishery" is updated to 0.

The estimated number of participants in the CA/OR thresher shark/swordfish drift gillnet fishery is updated to 85.

The estimated number of participants in the CA anchovy, mackerel, tuna purse seine fishery is updated to 110.

The estimated number of participants in the California pelagic longline fishery is updated to 6.

The estimated number of participants in the California sardine purse seine fishery is updated to 110.

The estimated number of participants in the California swordfish harpoon fishery is updated to 30.

List of Species and Stocks that are Incidentally Injured or Killed

The Eastern North Pacific stock of gray whales is added to the list of marine mammal species and stocks incidentally injured or killed by the WA, OR, CA crab pot fishery.

The CA/OR/WA stocks of long-beaked and short-beaked common dolphins and the U.S. stock of California sea lions are added to the list of marine mammal species and stocks incidentally injured or killed by the CA yellowtail barracuda, white seabass, and tuna drift gillnet fishery.

The CA/OR/WA stocks of Risso's dolphin is added to the list of marine mammal species and stocks incidentally injured or killed by the California pelagic longline fishery.

The U.S. stock of California sea lions is added to the list of marine mammal species and stocks incidentally injured or killed by the California purse seine fishery.

The Eastern North Pacific resident and transient stocks of killer whales are added to the list of marine mammal species and stocks incidentally injured or killed by the AK BSAI Pacific cod longline fishery.

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

The "Mid-Atlantic bottom trawl fishery" (name change from "Mid-Atlantic mixed species trawl fishery," see Fishery Name and Organizational Changes and Clarifications section) is elevated from Category III to Category II.

The "Northeast bottom trawl fishery," (proposed name change from "North Atlantic bottom trawl fishery," see Fishery Name and Organizational Changes and Clarifications section) is elevated from Category III to Category II.

Addition of Fisheries to the LOF

The "Atlantic shellfish bottom trawl fishery" is added to the LOF as a Category III fishery that encompasses the calico scallops trawl fishery, crab trawl fishery, Georgia/South Carolina/Maryland whelk trawl fishery, Gulf of Maine/Mid-Atlantic sea scallops trawl

fishery, and Gulf of Maine northern shrimp trawl fishery.

Removal of Fisheries from the LOF

The following trawl fisheries are removed from the 2005 LOF: "U.S. Atlantic monkfish trawl fishery," "Calico Scallops Trawl Fishery," "Crab Trawl Fishery," "Georgia/South Carolina/Maryland Whelk Trawl Fishery," "Gulf of Maine/Mid-Atlantic Sea Scallops Trawl Fishery," and "Gulf of Maine Northern Shrimp Trawl Fishery."

Fishery Name and Organizational Changes and Clarifications

The "Atlantic herring mid-water trawl fishery (including pair trawl)" is renamed the "Northeast mid-water trawl fishery."

The "Atlantic squid, mackerel, and butterfish trawl fishery" is renamed the "Mid-Atlantic mid-water trawl fishery (including pair trawl)." NMFS unintentionally omitted the parenthetical information in the proposed 2005 LOF, but did note in the explanation of the name change that the agency intended to include all components of this fishery.

The "Delaware Bay inshore gillnet fishery" is renamed the "Delaware River inshore gillnet fishery."

The "Gulf of Maine tub trawl groundfish bottom longline/hook-and-line fishery" is renamed the "Northeast/Mid-Atlantic bottom longline/hook-and-line fishery."

The "Mid-Atlantic coastal gillnet fishery" is renamed the "Mid-Atlantic gillnet fishery."

The "Mid-Atlantic mixed species trawl fishery" is renamed the "Mid-Atlantic bottom trawl fishery."

The "North Atlantic bottom trawl fishery" is renamed the "Northeast bottom trawl fishery."

Number of Vessels/Persons

The estimated number of participants in the "Atlantic shellfish bottom trawl fishery" is updated to 972.

List of Species and Stocks that are Incidentally Injured or Killed

Atlantic Mixed Species Trap/Pot Fishery

The Canadian east coast stock of minke whales and the Gulf of Maine/Bay of Fundy stock of harbor porpoise are removed from the list of marine mammal species and stocks incidentally injured or killed by the Atlantic mixed species trap/pot fishery.

Atlantic Ocean, Caribbean, and Gulf of Mexico Large Pelagics Longline Fishery

The Western North Atlantic stock of striped dolphins, the Gulf of Maine/Bay

of Fundy stock of harbor porpoise, the Western North Atlantic stock of humpback whales, and the Canadian East coast stock of minke whales are removed from the list of marine mammal species and stocks incidentally injured or killed by the Atlantic Ocean, Caribbean, and Gulf of Mexico large pelagics longline fishery.

The Western North Atlantic stocks of mesoplodon beaked whales and Cuvier's beaked whales, and the Northern Gulf of Mexico stock of short-finned pilot whales are added to the list of marine mammal species and stocks incidentally injured or killed by the Atlantic Ocean, Caribbean, and Gulf of Mexico large pelagics longline fishery.

Chesapeake Bay Inshore Gillnet Fishery

Gulf of Maine/Bay of Fundy stock of harbor porpoise is removed from the list of marine mammal species and stocks incidentally injured or killed by the Chesapeake Bay inshore gillnet fishery.

Delaware River Inshore Gillnet Fishery

The Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins are removed from the list of marine mammal species and stocks incidentally injured or killed by the Delaware River inshore gillnet fishery (proposed name change from Delaware Bay inshore gillnet fishery, see Fishery Name and Organizational Changes and Clarifications section).

Gulf of Maine Herring and Atlantic Mackerel Stop Seine/Weir Fishery

The Western North Atlantic stocks of humpback whales and North Atlantic right whales are removed from the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Maine herring and Atlantic mackerel stop seine/weir fishery.

The Western North Atlantic stock of Atlantic white-sided dolphins is added to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Maine herring and Atlantic mackerel stop seine/weir fishery.

Gulf of Mexico Butterfish Trawl Fishery

The Eastern Gulf of Mexico stocks of Atlantic spotted dolphins and pantropical spotted dolphins are removed from the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico butterfish trawl fishery.

The Northern Gulf of Mexico outer continental shelf stock and Northern Gulf of Mexico continental shelf edge and slope stock of bottlenose dolphins

are added to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico butterfly trawl fishery.

Gulf of Mexico Menhaden Purse Seine Fishery

The Eastern Gulf of Mexico coastal stock of bottlenose dolphins and the Gulf of Mexico bay, sound and estuarine stock of bottlenose dolphins are added to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico menhaden purse seine fishery.

Long Island Sound Inshore Gillnet Fishery

The Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins are removed from the list of marine mammal species and stocks incidentally injured or killed by the Long Island Sound inshore gillnet fishery.

Mid-Atlantic Bottom Trawl Fishery

The Western North Atlantic stocks of long-finned pilot whales, short-finned pilot whales, and common dolphins are added to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic bottom trawl fishery.

Mid-Atlantic Gillnet Fishery

The Western North Atlantic stock of gray seals and the Western North Atlantic stock of fin whales are added to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic gillnet fishery.

Mid-Atlantic Menhaden Purse Seine Fishery

The Western North Atlantic stock of humpback whales is removed from the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic purse seine fishery.

Mid-Atlantic Mid-water Trawl Fishery

The Western North Atlantic offshore stock of bottlenose dolphins is added to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic mid-water trawl fishery.

Northeast Bottom Trawl Fishery

The Western North Atlantic stock of harp seals and the Gulf of Maine/Bay of Fundy stock of harbor porpoise are added to the list of marine mammal species and stocks incidentally injured

or killed by the Northeast bottom trawl fishery (proposed name change from North Atlantic bottom trawl fishery, see Fishery Name and Organizational Changes and Clarification section).

Northeast/Mid-Atlantic Bottom Longline/Hook-and-Line Fishery

The Western North Atlantic stocks of harbor seals, gray seals, and humpback whales are removed from the list of marine mammal species and stocks incidentally injured or killed by the Northeast/Mid-Atlantic bottom longline/hook-and-line fishery.

Northeast Mid-water Trawl Fishery

The Western North Atlantic stocks of long-finned pilot whales, short-finned pilot whales, and Atlantic white-sided dolphins are added to the list of marine mammal species and stocks incidentally injured or killed by the Northeast mid-water trawl fishery.

Northeast Sink Gillnet Fishery

The Western North Atlantic stocks of killer whales, spotted dolphins, and false killer whales are removed from the list of marine mammal species and stocks incidentally injured or killed by the Northeast sink gillnet fishery.

The Western North Atlantic stocks of Risso's dolphins and hooded seals are added to the list of marine mammal species and stocks incidentally injured or killed by the Northeast sink gillnet fishery.

Rhode Island, Southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) Inshore Gillnet Fishery

The Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins are removed from the list of marine mammal species and stocks incidentally injured or killed by the Rhode Island, Southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet fishery.

Southeastern U.S. Atlantic and Gulf of Mexico Shrimp Trawl Fishery

The Western Gulf of Mexico coastal stock of bottlenose dolphins, the Eastern Gulf of Mexico coastal stock of bottlenose dolphins, the Gulf of Mexico bay, sound, and estuarine stock of bottlenose dolphins, and the Florida stock of the West Indian manatee are added to the list of marine mammal species and stocks incidentally injured

or killed by the Southeastern U.S. Atlantic and Gulf of Mexico shrimp trawl fishery.

U.S. Atlantic Tuna Purse Seine Fishery

The Western North Atlantic stocks of long-finned and short-finned pilot whales are added to the list of marine mammal species and stocks incidentally injured or killed by the U.S. Atlantic tuna purse seine fishery. Interactions between each of these marine mammal stocks/species and this fishery have been documented in recent SARs.

List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels/participants 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.

The tables also list the marine mammal species or stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience serious injury or mortality in a given fishery, but also includes species or stocks for which there are anecdotal or historical, but not necessarily current, records of interaction. Additionally, species identified by logbook entries may not be verified. Not all species or stocks identified are the reason for a fishery's placement in a given category. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are 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 "Category II fishery" in 50 CFR 229.2.

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.

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Table 1 - List of Fisheries Commercial Fisheries in the Pacific Ocean

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Category I		
GILLNET FISHERIES:		
CA angel shark/halibut and other species set gillnet (>3.5 in. mesh)	58	California sea lion, U.S. Common dolphin, long-beaked CA Common dolphin, short-beaked, CA/OR/WA Harbor seal, CA Harbor porpoise, Central CA Northern elephant seal, CA breeding Sea otter, CA
CA/OR thresher shark/swordfish drift gillnet (≥14 in. mesh)	85	Baird's beaked whale, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Cuvier's beaked whale, CA/OR/WA Dall's porpoise, CA/OR/WA Fin whale, CA/OR/WA Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA-Mexico Killer whale, CA/OR/WA Pacific coast Long-beaked common dolphin, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Northern elephant seal, CA breeding Northern fur seal, San Miguel Island Northern Pacific white-sided dolphin, CA/OR/WA Northern right-whale dolphin, CA/OR/WA Pygmy sperm whale, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA Southern Pacific white-sided dolphin, CA/OR/WA Sperm whale, CA/OR/WA Steller sea lion, Eastern U.S. Striped dolphin, CA/OR/WA
LOONGLINE/SET LINE FISHERIES:		
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line	140	Bottlenose dolphin, HI False killer whales, HI Humpback whale, Central North Pacific Risso's dolphin, HI Short-finned pilot whale, HI Spinner dolphin, HI Sperm whale, HI
Category II		
GILLNET FISHERIES:		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Bristol Bay salmon drift gillnet	1,903	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	1,014	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 drift gillnet	576	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Steller sea lion, Western U.S.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA Harbor seal, GOA Sea otter, AK
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented
AK Peninsula/Aleutian Islands salmon drift gillnet	164	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet	116	Harbor porpoise, Bering Sea Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	541	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Sea Otter, AK Steller sea lion, Western U.S.
AK Southeast salmon drift gillnet	481	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet	170	Gray whale, Eastern North Pacific Harbor seal, Southeast AK
CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery (mesh size > 3.5 inches and < 14 inches)	24	California sea lion, U.S. Long-beaked common dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded)	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA Harbor seal, WA inland
<u>PURSE SEINE FISHERIES:</u>		
AK Southeast salmon purse seine	416	Humpback whale, Central North Pacific
CA anchovy, mackerel, tuna purse seine	110	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA
<u>TRAWL FISHERIES:</u>		
AK miscellaneous finfish pair trawl	2	None documented
AK Bering Sea, Aleutian Islands flatfish trawl	26	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands pollock trawl	120	Humpback whale, Central North Pacific Humpback whale, Western North Pacific Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Steller sea lion, Western U.S.
<u>LONGLINE/SET LINE FISHERIES:</u>		
AK Bering Sea, Aleutian Islands Greenland turbot longline	36	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient
AK Bering Sea, Aleutian Islands Pacific cod longline	114	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient
CA pelagic longline	6	California sea lion, U.S. Risso's dolphin, CA/OR/WA
OR swordfish floating longline	0	None documented
OR blue shark floating longline	1	None documented
<u>POT, RING NET, AND TRAP FISHERIES:</u>		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific Humpback whale, Western North Pacific
Category III		
<u>GILLNET FISHERIES:</u>		
AK Cook Inlet salmon set gillnet	745	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Steller sea lion, Western U.S.
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	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	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less	341	None documented
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
<u>PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:</u>		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented
AK octopus/squid purse seine	2	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK roe herring and food/bait herring beach seine	8	None documented
AK roe herring and food/bait herring purse seine	624	None documented
AK salmon beach seine	34	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II)	953	Harbor seal, GOA
CA herring purse seine	100	California sea lion, U.S. Harbor seal, CA
CA sardine purse seine	110	California sea lion, U.S.
HI opelu/akule net	16	None documented
HI purse seine	18	None documented
HI throw net, cast net	47	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
<u>DIP NET FISHERIES:</u>		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
<u>MARINE AQUACULTURE FISHERIES:</u>		
CA salmon enhancement rearing pen	>1	None documented
OR salmon ranch	1	None documented
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
<u>TROLL FISHERIES:</u>		
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries	1,530 (330 AK)	None documented
AK salmon troll	2,335	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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
Guam tuna troll	50	None documented
HI net unclassified	106	None documented
HI trolling, rod and reel	1,795	None documented
<u>LONGLINE/SET LINE FISHERIES:</u>		
AK Bering Sea, Aleutian Islands rockfish longline	17	None documented
AK Bering Sea, Aleutian Islands sablefish longline	63	None documented
AK Gulf of Alaska halibut longline	1302	None documented
AK Gulf of Alaska Pacific cod longline	440	None documented
AK Gulf of Alaska rockfish longline	421	None documented
AK Gulf of Alaska sablefish longline	412	None documented
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish)	731	None documented
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
<u>TRAWL FISHERIES:</u>		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	8	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	87	None documented
AK Bering Sea, Aleutian Islands rockfish trawl	9	None documented
AK Gulf of Alaska flatfish trawl	52	None documented
AK Gulf of Alaska Pacific cod trawl	101	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Gulf of Alaska pollock trawl	83	None documented
AK Gulf of Alaska rockfish trawl	45	None documented
AK food/bait herring trawl	3	None documented
AK miscellaneous finfish otter or beam trawl	6	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
WA, OR, CA groundfish trawl	585	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, Central North Pacific Steller sea lion, Western U.S.
WA, OR, CA shrimp trawl	300	None documented
<u>POT, RING NET, AND TRAP FISHERIES:</u>		
AK Aleutian Islands sablefish pot	8	None documented
AK Bering Sea, Aleutian Islands Pacific cod pot	76	None documented
AK Bering Sea, Aleutian Islands crab pot	329	None documented
AK Gulf of Alaska crab pot	unknown	None documented
AK Gulf of Alaska Pacific cod pot	154	None documented
AK Southeast Alaska crab pot	unknown	None documented
AK Southeast Alaska shrimp pot	unknown	None documented
AK octopus/squid pot	72	None documented
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	Gray whale, Eastern North Pacific
WA, OR, CA sablefish pot	176	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
WA, OR shrimp pot & trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	15	Hawaiian monk seal
HI shrimp trap	5	None documented
<u>HANDLINE AND JIG FISHERIES:</u>		
AK miscellaneous finfish handline and mechanical jig	100	None documented
AK North Pacific halibut handline and mechanical jig	93	None documented
AK octopus/squid handline	2	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	<50	None documented
HI aku boat, pole and line	54	None documented
HI deep sea bottomfish	434	Hawaiian monk seal
HI inshore handline	650	Bottlenose dolphin, HI
HI tuna	144	Bottlenose dolphin, HI Hawaiian monk seal Rough-toothed dolphin, HI
WA groundfish, bottomfish jig	679	None documented
<u>HARPOON FISHERIES:</u>		
CA swordfish harpoon	30	None documented
<u>POUND NET/WEIR FISHERIES:</u>		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented
<u>BAIT PENS:</u>		
WA/OR/CA bait pens	13	None documented
<u>DREDGE FISHERIES:</u>		
Coastwide scallop dredge	108 (12 AK)	None documented

Fishery Description	Estimated # of vessels/pe rsons	Marine mammal species and stocks incidentally killed/injured
<u>DIVE, HAND/MECHANICAL COLLECTION FISHERIES:</u>		
AK abalone	1	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	3	None documented
AK herring spawn on kelp	363	None documented
AK urchin and other fish/shellfish	471	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI coral diving	2	None documented
HI fish pond	10	None documented
HI handpick	135	None documented
HI lobster diving	6	None documented
HI squidding, spear	267	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
<u>COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:</u>		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	None documented
HI "other"	114	None documented
<u>LIVE FINFISH/SHELLFISH FISHERIES:</u>		
CA finfish and shellfish live trap/hook-and-line	93	None documented

List of Abbreviations Used in Table 1: AK - Alaska; CA - California; GOA - Gulf of Alaska; HI - Hawaii; OR - Oregon; WA - Washington

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		
<u>GILLNET FISHERIES:</u>		
Mid-Atlantic gillnet	>655	Bottlenose dolphin, WNA coastal Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine Long-finned pilot whale, WNA Minke whale, Canadian east coast Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast sink gillnet	341	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, WNA Minke whale, Canadian east coast North Atlantic right whale, WNA Risso's dolphin, WNA White-sided dolphin, WNA
<u>LOGLINE FISHERIES:</u>		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	<200	Atlantic spotted dolphin, Northern GMX Atlantic spotted dolphin, WNA Bottlenose dolphin, GMX outer continental shelf Bottlenose dolphin, GMX continental shelf edge and slope Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA Mesoplodon beaked whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Pygmy sperm whale, WNA Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA
<u>TRAP/POT FISHERIES:</u>		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Fin whale, WNA Harbor seal, WNA Humpback whale, WNA Minke whale, Canadian east coast North Atlantic right whale, WNA
<u>TRAWL FISHERIES:</u>		
Mid-Atlantic mid-water trawl (including pair trawl)	620	Bottlenose dolphin, WNA offshore Common dolphin, WNA Long-finned pilot whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA
Category II		
<u>GILLNET FISHERIES:</u>		
Gulf of Mexico gillnet	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal
Northeast anchored float gillnet	133	Harbor seal, WNA Humpback whale, WNA White-sided dolphin, WNA
Northeast drift gillnet	unknown	None documented
Southeast Atlantic gillnet	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	6	Atlantic spotted dolphin, WNA Bottlenose dolphin, WNA coastal North Atlantic right whale, WNA
<u>TRAWL FISHERIES:</u>		
Mid-Atlantic bottom trawl	>1,000	Common dolphin, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA
Northeast mid-water trawl (including pair trawl)	17	Harbor seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast bottom trawl	1,052	Bottlenose dolphin, WNA offshore Common dolphin, WNA Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA Striped dolphin, WNA White-sided dolphin, WNA
<u>TRAP/POT FISHERIES:</u>		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal West Indian manatee, FL
Atlantic mixed species trap/pot	unknown	Fin whale, WNA Humpback whale, Gulf of Maine
<u>PURSE SEINE FISHERIES:</u>		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
<u>HAUL/BEACH SEINE FISHERIES:</u>		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal
<u>STOP NET FISHERIES:</u>		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal
<u>POUND NET FISHERIES:</u>		
Virginia pound net	187	Bottlenose dolphin, WNA coastal
Category III		
<u>GILLNET FISHERIES:</u>		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Chesapeake Bay inshore gillnet	45	None documented
Delaware River inshore gillnet	60	None documented
Long Island Sound inshore gillnet	20	None documented
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet	32	None documented
<u>TRAWL FISHERIES:</u>		
Atlantic shellfish bottom trawl	972	None documented
Gulf of Mexico butterflyfish trawl	2	Bottlenose dolphin, Northern GMX outer continental shelf Bottlenose dolphin, Northern GMX continental shelf edge and slope
Gulf of Mexico mixed species trawl	20	None documented

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
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal
U.S. Atlantic tuna purse seine	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
U.S. Mid-Atlantic hand seine	>250	None documented
LOGLINE/HOOK-AND-LINE FISHERIES:		
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	Humpback whale, WNA
Northeast/Mid-Atlantic bottom longline/hook-and-line	46	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	<125	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented
U.S. Mid-Atlantic eel trap/pot	>700	None documented
<u>STOP SEINE/WEIR/POUND NET FISHERIES:</u>		
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 North Carolina roe mullet stop net)	751	None documented
<u>DREDGE FISHERIES:</u>		
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
<u>HAUL/BEACH SEINE FISHERIES:</u>		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
<u>DIVE, HAND/MECHANICAL COLLECTION FISHERIES:</u>		
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
<u>COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:</u>		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel	4,000	None documented

List of Abbreviations Used in Table 2: FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; NC - North Carolina; SC - South Carolina; TX - Texas; WNA - Western North Atlantic

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 final rule will not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* For convenience, the factual basis leading to the certification is repeated below.

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA, obtain an Authorization Certificate, and pay a fee of \$25. Additionally, fishers may be subject to a take reduction plan and requested to carry an observer. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. NMFS has estimated that approximately 41,600 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register. However, registration has been integrated with existing state or Federal registration programs for the majority of these fisheries so that the majority of fishers do not need to register separately under the MMPA. Currently, approximately 5,800 fishers register directly with NMFS under the MMPA authorization program.

We received and responded to one comment on the economic analysis

(Comment 27). This comment did not result in any material change to the factual basis for our certification. As a result, no regulatory flexibility analysis is required, nor was one prepared.

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

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a

penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

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

An EA was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA (1995 EA). NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 and 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This final rule would not make any significant change in the management of reclassified fisheries, and therefore, this final rule is not expected to change the analysis or conclusion of the 2005 EA. If NMFS takes a management action, for example, through the development of a TRP, NMFS will first prepare an environmental document as required under NEPA specific to that action.

This final rule will not affect species listed as threatened or endangered under the Endangered Species Act

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

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

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

Dated: December 28, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 06-38 Filed 1-3-06; 8:45 am]

BILLING CODE 3510-22-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 122805B]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily retention limit for two of the previously designated restricted fishing days (RFD) should be adjusted. These General category RFDs are being waived to provide reasonable opportunity for utilization of the coastwide General category BFT quota. Therefore, NMFS waives the RFDs for December 31, 2005, and January 1, 2006, and increases the daily retention limit from zero to two large medium or giant BFT on these previously designated RFDs.

DATES: Effective dates for BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2005 BFT fishing year began on June 1, 2005, and ends May 31, 2006. The final initial 2005 BFT specifications and General category effort controls (June 7, 2005; 70 FR 33033) established the following RFD schedule for the 2005 fishing year: All Fridays, Saturdays, and Sundays from November 18, 2005, through January 31, 2006, and Thursday, November 24, 2005, inclusive, provided quota remained available and the fishery was open. RFDs are intended to extend the General category BFT fishery late into the southern Atlantic season. NMFS has determined that the BFT General category daily retention limit for two of the previously designated RFDs should be adjusted as described in Table 1 to provide reasonable opportunity to utilize the coastwide General category BFT quota.

TABLE 1.—EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit category	Effective dates	Area	BFT size class limit
Atlantic tunas General and HMS Charter/Headboat (while fishing commercially).	December 31, 2005, and January 1, 2006.	All	Two BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger.

Adjustment of General Category Daily Retention Limits

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. NMFS has taken multiple actions during the 2005 fishing year in an attempt to allow for maximum utilization of the General category BFT quota. On September 28, 2005 (70 FR 56595), NMFS adjusted the commercial daily BFT retention limit (on non-RFDs), in all areas, for those vessels fishing under the General category quota, to two large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip, effective through January 31, 2006, inclusive, provided

quota remained available and the fishery remained open. On November 9, 2005 (70 FR 67929), NMFS waived the previously designated RFDs for the month of November and adjusted the daily retention limit on those RFDs to two large medium or giant BFT. On December 16, 2005 (70 FR 74712), NMFS waived previously designated RFDs for December 16-18, inclusive, and adjusted the daily retention limit on those RFDs to two large medium or giant BFT to provide reasonable opportunity to harvest the coastwide quota.

On December 7, 2005 (70 FR 72724), NMFS adjusted the General category quota by conducting a 200 mt inseason quota transfer to the Reserve category, resulting in an adjusted General category quota of 708.3 mt. This action was taken to account for any potential

overharvests that may occur in the Angling category during the 2005 fishing year (June 1, 2005 through May 31, 2006) and to ensure that U.S. BFT harvest is consistent with international and domestic mandates.

Catch rates in the BFT General category fishery have generally been low and weather conditions are predicted to be favorable over the weekend. Based on a review of dealer reports, daily landing trends, available quota, weather conditions, and the availability of BFT on the fishing grounds, NMFS has determined that waiving two RFDs established for December 31, 2005, and January 1, 2006, and increasing the General category daily BFT retention limit on those RFDs is warranted to assist the fishery in accessing the available quota. Therefore, NMFS adjusts the General category daily BFT

North Pacific Fishery Management Council

AGENDA B-7(f)
FEBRUARY 2006

Stephanie Madsen, Chair
Chris Oliver, Executive Director



605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone (907) 271-2809

Fax (907) 271-2817

Visit our website: <http://www.fakr.noaa.gov/npfmc>

February 28, 2005

Michael Payne
Chief, Marine Mammal Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Mr. Payne:

As required by the Marine Mammal Protection Act, the National Marine Fisheries Service (NMFS) published the draft List of Fisheries for 2005 (LOF) on December 2, 2004. The North Pacific Fishery Management Council reviewed the Proposed Rule (69 FR 70094) and received comments from its Statistical and Scientific Committee (SSC) and the public during its December 2004 and February 2005 meetings. The Council hereby submits its comments on the Proposed Rule; our comments fall into two general categories: A) The process for public review of the LOF, and B) Procedures for analysis of data for changing the category listing for five groundfish fisheries in the North Pacific. The Council asks that NMFS consider the following comments in finalizing the LOF for 2005 and when preparing future Lists.

A. The Public Review Process

The Council is concerned about the small amount of time provided to Councils and the public to meaningfully review the draft LOF, the Federal Register notice, and particularly the data and reports used by NMFS and their resultant rationale for assigning various fisheries to categories. The Council appreciates NMFS granting an extension of time to provide comments on the Proposed Rule, and we understand NMFS is considering the preparation of an analysis of the environmental effects of the LOF pursuant to the requirements of the National Environmental Policy Act (NEPA). The Council supports the decision by NMFS to prepare this analysis since some of the proposed changes for 2005 could have impacts on some Council/NMFS-managed fisheries in the North Pacific. The Council requests an opportunity to review this document, take public comment, and to provide additional comments to NMFS.

B. Analysis Supporting Fishery Categorization

NMFS is considering changes in the LOF that will affect certain Alaskan groundfish fisheries; the agency proposes to place the following fisheries into Category II:

- BSAI Pacific cod longline
- BSAI Greenland turbot longline
- BSAI pollock trawl
- BSAI flatfish trawl
- Bering Sea sablefish pot

The Proposed Rule also includes a proposal to add two marine mammal stocks to the list of marine mammal species and stocks that interact with the BSAI Pacific cod longline fishery: eastern North Pacific resident killer whale and eastern North Pacific transient killer whale.

The Council's comments on NMFS' analysis procedure are based on a review by its SSC, and fall into four general categories: serious injury/mortality (SIM) extrapolation methodology, conditions under which SIM data are collected, the representativeness of SIM data, and fishery interaction with overlapping marine mammal stocks. These comments generally focus on the analytical procedures followed by scientists at the Alaska Fisheries Science Center related to fishery interactions with marine mammal stocks in the Alaskan Exclusive Economic Zone.

1. Extrapolating SIM Incidents to an Entire Fishery

Incidents of serious injury and mortality in commercial fisheries are rare. Sampling rare events is problematic. In practice, unusual observations are often characterized as "outliers" and omitted from data used for estimation. While incidents of mortality and serious injury are unusual, it would not be appropriate to treat observed incidents as "outliers". When unusual observations are retained in data used for estimation, they can have a pronounced influence on the resulting estimates. The best defense against unusual observations exerting undue influence on the resulting estimates is to increase sample size as much as practicable. This would argue for basing the estimates on an average of the full time series of observations.

2. Fishery Conditions Under Which SIM Data are Collected

Data used in the LOF determination may have been generated under conditions that are not characteristic of current fisheries. For federally managed fisheries, this problem involves a tradeoff of increased observations over a longer time series and changes in the characteristics of fishing gear, and how and where that gear is used. The choice of a 5-year window is reasonable, but so would a longer or shorter window. The problem with many state-managed fisheries is the lack of recent verifiable information about marine mammal mortalities and serious injuries. Unless new information is developed for these fisheries through a verifiable sampling program, there does not seem to be a good alternative to continued use of estimates based on old information. Because estimated mortalities and serious injuries in state-managed fisheries affect overall estimates of mortality-serious injury for the state fisheries and related federally managed fisheries, it may be expedient to use funding earmarked for management of federal fisheries to develop a monitoring or sampling program for marine mammal mortalities in the state-managed fisheries.

3. Scaling Observed SIM Incidents to Unobserved Periods

Scaling from observed mortality to estimated mortality necessitates specific assumptions regarding the representativeness of observed hauls. These assumptions and the limitations of these assumptions are not unique to scaling observed mortality to estimates mortality; similar assumptions and limitations are at play in the estimation of target and incidental catches of fish. Specifically, it is assumed that the likelihood of incidence of serious injury or mortality is invariant across vessel size, fishing location, fishing time, gear configuration, etc. Concern about these types of limitations was instrumental to the decision to segregate the six fisheries defined in 2003 into the 22 fisheries defined for 2005. Because the area fished by unobserved vessels are not coincident with the areas fished by observed vessels, scaling observed mortality-serious injury incidents to include catches by unobserved vessels may not provide good estimates of overall mortality-serious injury incidents. Scaling observed incidents of mortality and serious injury from observed hauls to unobserved hauls on observed vessels may be less problematic.

However, if observers are notified by crew whenever mortality-serious injury incidents occur, it may be that all hauls are, in effect, observed for mortality and serious injury to marine mammals. If all hauls are, in effect, observed for mortality and serious injury to marine mammals, the observations are for the population of hauls and should not be expanded for unobserved hauls on observed vessels.

4. Fishery Interaction with Overlapping Marine Mammal Stocks

In the case of all five groundfish fisheries proposed for a change to Category II in the North Pacific, these fisheries reportedly interact with two whale stocks. Because these marine mammal stocks overlap in space and time, and because the patterns of overlap are not well understood, the analysts were not comfortable with assigning particular SIM events to either whale stock. During its October 2004 meeting, the Council's SSC suggested that one approach to this dilemma would be to weight the mortality-serious injury events by the probability that they involved marine mammals from particular population sub-units. The analysts have instead taken the stance that because they cannot rule out the possibility that particular mortality-serious injury events involved animals from particular population sub-units, the LOF determination with respect to each population sub-unit should allow for the possibility that mortality-serious injury event involved animals from that population sub-unit. While the approach taken by the analysts is not inappropriate for estimating the mortality-serious injury incidence for particular population sub-units, the Summary of Analysis should clearly note that it would not be consistent to sum the mortality-serious injury incidence across population sub-units. Samples taken from marine mammals killed incidental to fishing may help to assign particular mortality-serious injury incidents to particular population sub-units. While on-going research on the distribution of marine mammal stocks may help assign particular mortality-serious injury incidents to particular population sub-units, the lack of information about the stability of stock distributions over time may preclude using new information to assign historic mortality-serious injury incidents. In addition, the Council's SSC notes that research on the distribution of marine mammal stocks may lead to the definition of additional population sub-units.

During its February 2005 meeting, the Council received additional comments from its SSC. These comments reiterated the above four concerns, and detailed additional concerns. These SSC comments are attached, and the Council requests that NMFS consider them in its assessment of the LOF, not only for 2005 but also for subsequent years.

In summary, the Council is concerned about the overall impact of moving the five Alaskan EEZ groundfish fisheries from Category III to Category II. As the above comments suggest, there is uncertainty in NMFS' methodologies for assigning SIM incidents and extrapolating those incidents to an entire fishery. This uncertainty raises serious questions about the appropriateness of NMFS moving these five fisheries to Category II at this time until better data are generated. These and all groundfish fisheries under the Council's are now prosecuted under very different conditions than were extant in the 1990s. Rationalization programs have been instituted, and new management authorities have been developed that have collectively reduced the "race for fish" in the Alaskan EEZ, and thus promote more careful and directed fishing practices that avoid bycatch, reduce interaction with marine mammals and seabirds, and promote safety and economic stability.

The Council appreciates the opportunity to comment on this important issue.

Sincerely,

Stephanie Madsen
Chair

DRAFT
MINUTES
SCIENTIFIC STATISTICAL COMMITTEE
February 7-9, 2005

The Scientific and Statistical Committee met during February 7-9, 2005 at the Madison Renaissance Hotel in Seattle, WA. Members present were:

Gordon Kruse, Chair	Pat Livingston, Vice Chair	Keith Criddle
Steve Hare	Sue Hills	Anne Hollowed
Terry Quinn	David Sampson	Farron Wallace
Doug Woodby	Mark Herrmann	Seth Macinko
Ken Pitcher	Franz Mueter	

Members absent:

George Hunt

Election of Officers

Gordon Kruse was elected Chair and Pat Livingston was elected Vice Chair.

B-7 Protected Species

Bill Wilson (Council staff) presented eight reports on protected resource issues. Robyn Angliss (NMML) presented additional information on the list of fisheries, and Ann Edwards (NRC Research Associate and visiting scholar at UW) presented information on the seabird – offal project. Public testimony was presented by Gerry Merrigan (Prowler Fisheries), Thorn Smith (North Pacific Longline Association), and Ed Richardson (Pollock Conservation Cooperative).

List of Fisheries for 2005

The SSC previously commented on the analyses and assumptions that went into the List of Fisheries for 2005 report in our October and December 2004 minutes. Four main issues were highlighted: (1) the sampling of incidents of serious injury and mortality of marine mammals, which are rare events, and the appropriate length of time series of observations to use to estimate the frequency of these rare events, (2) the need for observers to estimate the frequency of serious injury and mortality in state-managed fisheries, (3) the assignment of observed mortalities to more than one marine mammal stock per occurrence, and (4) the appropriateness of procedures used to estimate incidents of serious injury and mortality for unobserved hauls and fisheries. **The SSC feels that these issues remain to be addressed, but they are not easily resolved and the SSC intends to continue a dialogue with analysts to provide advice on their long-term solution.** Here, the SSC adds additional comment on these issues.

Measures of Fishing Effort

The SSC discussed the appropriateness of the use of total catch as a proxy for fishing effort. Given the data availability, it is understandable that catch has been used in this way, especially when aggregating across diverse gear types. However, now that some aggregate fisheries are being disaggregated into finer, discrete fishery units based on target species and gear, direct estimates of fishing effort units might be

used. **The SSC encourages the analysts to explore the use of direct measures of fishing effort (instead of using catch as a proxy for effort) in future analyses at least when and where possible.**

Sample Size

There is a trade off between sample size and precision of estimates of rates of incidents of serious injury and mortality. On the one hand, estimation of rates of occurrence by fishery has the potential to discriminate differential rates among various fisheries. On the other hand, splitting of limited data into finer fishery units leads to the possibility of generating biased estimates associated with small sample sizes. The same goes for the length of the time series used to estimate the frequency of rare events. The analysts provided good justifications for selecting a 5-year period (rather than, say, a 10-year period); one reason is that fisheries change over time so that historical rates may not apply to contemporary fisheries. However, use of a shorter time period can increase the influence of a single rare observation on the average used for estimation. **The SSC recommends that the analysts further consider the tradeoff between the desire for finer spatial and temporal resolution of incidental take estimates and the potential for introduced bias associated with small sample sizes used to make these estimates.**

Assignment of Individual Incidental Takes to more than One Stock

The SSC reconsidered the issue of assigning a particular take (e.g., killer whale) to more than one stock (e.g., transient vs. resident ecotype) for the affected fishery when it is uncertain to which marine mammal stock the take belongs. The approach taken was to assign the take to both stocks when the stock origin was uncertain. In such instances, another approach would be to apportion the take among stocks from a probabilistic weighting based on the observed proportions of the two ecotypes in the region in which the take occurred. The SSC noted that the particular approach used depends on the purpose of the analysis. For instance, if the goal is to obtain best estimates of takes by stock and fishery or to predict future takes, then the probabilistic approach may be most appropriate when data are adequate to estimate the proportions. If instead the goal is to estimate the maximum possible number of takes of a particular stock by a particular fishery, then the dual-assignment approach may be best because it is most conservative. **The SSC urges the analysts to clearly note the procedure used and its caveats, so that others using summary tables do not mistakenly double count the number of actual number of takes when stock of origin is uncertain.** Robyn Angliss noted that when genetic samples are taken, the take can be correctly assigned appropriately to the correct stock and the take is not listed under both ecotypes. The SSC anticipates that this "double-counting issue" will become less of a problem as the database of genetic samples is built and the database of confirmed stock identifications becomes more adequate.

Estimation Procedure for Total Take

Most of the SSC discussion concerned the statistical methods used to estimate the number of takes and the confidence interval for those estimates. **The SSC recommends that future analyses should address some additional considerations, including assumptions about the statistical distribution (e.g., discrete versus continuous, symmetrical versus asymmetrical) from which the sample is drawn. For instance, the common assumption that samples are taken from a continuous normal distribution can lead to a negative lower bound on the confidence interval. Of course, the number of takes cannot be less than zero. So, the analyst might want to consider a lognormal distribution or a censored normal distribution to ensure that the confidence interval does not include negative numbers.**

The SSC also discussed the effect of rounding the estimated number of takes to an integer (i.e., whole number of animals). **This procedure makes sense from a practical standpoint, but the SSC notes that this rounding requires that adjustments to the confidence interval need to be made. Moreover,**

the SSC would like to see an explicit statement of the rounding rule used to rounding up to a whole number of animals.

Finally, the SSC recommends that a more detailed discussion of strata (page 9 of Perez 2003) is needed, particularly regarding how the analysts calculated regional and annual estimates of incidental takes. The SSC was especially uncomfortable with the way in which unobserved takes were combined with observed takes. The SSC understands that takes volunteered by vessel crew during unobserved hauls occurred on vessels with observers only. The SSC is comfortable with the approach to extrapolate estimates of takes from the observed portion of a fishery to the unobserved portion of the same fishery, but the addition of volunteered (unobserved takes) is problematic and alters the statistical properties of the estimates in unknown ways, because the number of hauls represented by these volunteered accounts is undefined.

Other Issues

The SSC recommends that the analysis should use the most recent estimates of killer whale abundance for the area west of Kodiak. The estimates, based on considerable survey effort, indicate much larger populations than previously thought. Inclusion of these data would increase the estimate of PBR and might affect the classification of some fisheries.

The two documents reviewed by the SSC do not address the issue of serious injuries associated with entanglement and escape of marine mammals in active and discarded fishing gear and marine debris. Steller sea lions and northern fur seals are particularly vulnerable. This source of serious injury or mortality occurs regularly but the extent is unknown and difficult to estimate. It is likely this source of mortality could be much greater than the incidental take in commercial fisheries. Common entanglements include fragments of netting, packing bands, loops of line around the neck and ingested hooks from long-line fisheries and commercial and sport trolling. **The SSC recommends that future analyses should describe how the cumulative effects of all mortality sources have been taken into account.**

North Pacific Fishery Management Council

AGENDA B-7(g)
FEBRUARY 2006

Stephanie Madsen, Chair
Chris Oliver, Executive Director



605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone (907) 271-2809

Fax (907) 271-2817

Visit our website: <http://www.fakr.noaa.gov/npfmc>

November 9, 2005

William Hogarth, Ph.D.
Assistant Administrator for Fisheries
NOAA Fisheries
1315 East West Highway
Silver Spring, Maryland 20910

Dear Bill:

I am writing to underscore a critical problem raised in the recent letter from the North Pacific Research Board (NPRB) – that is the inability to process and approve marine mammal research permits in a timely fashion. We are particularly concerned that yet another NEPA-based litigation exercise is once again thwarting our best efforts at responsible resource management, and question the agency's decision to respond to this litigation threat by allowing important research to be delayed indefinitely while undertaking another, perhaps unnecessary and ill-advised, NEPA compliance exercise. The remainder of this letter simply echoes the arguments from the November 4 NPRB letter, but I wanted the North Pacific Fishery Management Council to be on record in full support of those arguments.

NOAA is uniquely responsible, on the one hand, for developing biological opinions and reasonable and prudent alternatives under the ESA, and on the other, for promulgating restrictive fisheries regulations under the MSFCMA. Decisions under both acts must be balanced and informed by current, scientific information on the status, migration, behavior, and feeding patterns of marine mammals, particularly as they may be impacted by fisheries. Examples of current, simmering marine mammal issues off Alaska include designation of critical habitat for Northern right whales, recovery of Steller sea lions, and potential fisheries impacts on northern fur seals.

The lack of information on those and other species of marine mammals likely may lead to excessively precautionary management and the attendant burden of overly restrictive regulations on the fisheries. It doesn't have to be that way. Let's not be forced down the same painful path that we all traveled to protect Steller sea lions when every scrap of information was challenged. We need robust marine mammal research and scientific information in advance, not at the time of crisis.

Our Alaska fisheries have been lauded by the U.S. Commission on Ocean Policy as well managed and sustainable. To continue these practices, especially as we move toward fishery ecosystems plans, more and better scientific information will be required. We must maintain the flow of such information if we are to be successful. We must be able to field large research programs now to provide information 3-5 years hence that will underpin resource management off Alaska.

We believe that a major impediment to achieving that understanding is developing in the Office of Protected Resources. We have always found the OPR staff to be highly professional and dedicated. However, despite their dedication, hard work and good intentions, we believe the office is woefully understaffed to timely process permits and unnecessarily conservative regarding the implementation of

NEPA and ESA requirements. For example, we now are being informed that new permits for marine mammal research for several ESA listed species may be held in abeyance for two years or longer while a comprehensive EIS is being developed. This one-two punch has the potential to bring field research up here to a screeching halt.

This situation already is directly impeding marine mammal research supported by the North Pacific Research Board. Several projects cannot get started for lack of permits, or worse yet, may be delayed indefinitely while NEPA analyses are completed. Our legislative mandate requires us to provide information to address pressing fishery management issues or marine ecosystem information needs. And yet we are being placed in the awkward position of not being able to do the research needed to address either priority. This lack of permits also is impacting the ability of federal and state agencies, universities, and other research centers to do their research.

We urge you to take the actions necessary to (1) alleviate the situation within OPR that is delaying marine mammal research permits and (2) provide for ongoing and new field research programs while environmental analyses are being prepared under NEPA, if indeed you conclude that such analyses are necessary. We simply cannot hold critical marine mammal research in abeyance. Environmental analyses, biological opinions, and fisheries regulations all must be informed by the best available information on marine mammals and their interactions with fisheries. Management decisions under the ESA must be appropriately precautionary. Therefore, reducing uncertainty through research is a very important element in balancing the management of living marine resources in Alaska with the needs of coastal communities dependent on these resources. Resolving this issue is critical to the fishing industry, other marine industries, subsistence users, and everyone who is trying to manage for sustainable and healthy ecosystems off Alaska.

Thank you for your serious consideration of these comments.

Sincerely,



Stephanie D. Madsen
Chair



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

DEC - 7 2005

Ms. Stephanie D. Madsen
Chair, North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, Alaska 99501-2252

Dear Ms. *Stephanie* Madsen:

RECEIVED
DEC 13 2005
N.P.F.M.C.

Thank you for your cosigned letter regarding the scientific research permit process as it relates to marine mammal research programs in Alaska.

I share your concerns about information needs for responsible resource management. NOAA's National Marine Fisheries Service, Office of Protected Resources is dedicated to facilitating sound scientific research that will benefit conservation and management of living marine resources. We are reviewing staffing and funding in the Permits Division and the Endangered Species Division in the Office of Protected Resources to be sure our resources are properly aligned with priorities.

I have directed staff in Office of Protected Resources to prepare an Environmental Impact Statement under the National Environmental Policy Act to analyze the environmental impacts of the Steller sea lion and northern fur seal research programs. Once completed, this document will help streamline the permit process for these species and facilitate research designed to meet the needs of resource managers to support informed decision-making. In the interim, I have directed Office of Protected Resources staff to move forward with processing pending applications for fur seal research.

If you have further questions about the process for permits under the Endangered Species Act, please contact Jim Lecky, Director, Office of Protected Resources, (301) 713-2332.

Sincerely,

William T. Hogarth, Ph.D.



North Pacific Fishery Management Cou . . .

Stephanie Madsen, Chair
Chris Oliver, Executive Director



605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone (907) 271-2809

Fax (907) 271-2817

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December 13, 2005

Dr. Rowan Gould
Regional Director
U.S. Fish & Wildlife Service
1011 E. Tudor Rd.
Anchorage, AK 99503

Dear Dr. Gould:

The North Pacific Fishery Management Council has reviewed the draft Short-tailed Albatross Recovery Plan, and discussed the plan at its December 2005 meeting. The Council appreciates the time and effort that the Short-Tailed Albatross Recovery Team (START) and the U.S. Fish & Wildlife Service's Anchorage Fish and Wildlife Field Office put into this recovery plan. We found the document well written with clearly-stated recovery criteria and ambitious recovery actions that appear reasonable and attainable. Particularly impressive is the international effort currently under way to save this highly endangered species. The Council encourages the START and the USFWS to continue efforts to better understand the factors that may be limiting growth of the population and to continue its cooperative work with the Japanese government to establish additional breeding colonies that may ensure the future production of this species.

For the past decade or more, the North Pacific Council and the National Marine Fisheries Service, Alaska Region, have recognized the need for conservation of North Pacific seabird species, particularly seabirds that interact with the fisheries prosecuted in offshore waters. The Council has established a variety of seabird avoidance regulations aimed at reducing the injury or mortality caused by fishing operations, particularly albatrosses and especially the endangered short-tailed albatross. Members of the North Pacific commercial fishing industry have cooperated with these efforts and have pioneered techniques for reducing fishery/seabird interactions. These include voluntary deployment of paired streamer lines (before such actions were required by regulation), and use of integrated weight groundlines to sink bait away from birds faster. Currently the trawl industry is experimenting with techniques to minimize seabird interactions with trawl gear. The Council and NMFS have supported many of these initiatives by granting exempted fishing permits to test the effectiveness of alternative methodologies, and the Council expects this cooperative work will continue in the future. The objective of this work is to maintain healthy and productive fisheries while conserving the seabird species that occur in these waters.

The Council-managed groundfish and trawl fisheries currently operate under an Incidental Take Statement for short-tailed albatross. Many of the vessels participating in these fisheries are required to carry observers who monitor seabird interactions and collect valuable data on the nature of seabird/fishery interactions.

The Council appreciates the work the USFWS has put in this short-tailed albatross recovery plan, and we look forward to cooperating with the START and the USFWS in other seabird conservation efforts in the North Pacific.

Sincerely,

Stephanie D. Madsen

Stephanie Madsen
Chair

Cc: Leonard Corin, Chris Oliver, Judy Jacobs, Greg Balogh

SPECIAL PAPER SESSION '*Seabird/Fisheries Interactions*'
AT THE YEARLY MEETING OF THE
PACIFIC SEABIRD GROUP (PSG) 2006

Audience: General Public, everybody welcome and with an interest in Fisheries Seabirds and Ecology

Date: 17th February

Location: Girdwood Alaska, Alyeska Prince Hotel

Meeting Details: <http://www.pacificseabirdgroup.org/mtg.html>

Session Goals and Description:

Seabirds are known to reflect man-made changes in ocean habitat. Fisheries can affect and modify this precious ecosystem. This session attempts to present in a collaborative fashion the views from the fisheries industry, NGOs and stakeholders, as well as the interactions that commercial human activities can impose on seabirds across taxa and locations. Emphasis will be given on quantified information relevant to a science-based management, on how to determine impact thresholds for management, on various policy implementations, and on progressive approaches relevant for a sustainable management and for safeguarding marine wildlife in the future. The session will close with a public discussion on seabird-fisheries issues with relevant stakeholders and experts being present. The intent of this session is to present a balanced view and latest topics, as well as to assist attendees in obtaining a deeper appreciation of the complex economic and ecological issues of oceans and seabirds.

List of covered topics (subject to change):

The Magnus Steven Act

Summary and overview of fisheries-seabird issues for the North Sea

Discard & fisheries: What is at stake ?

Fishery Effects on Seabirds in Eastern Canada

Seabirds and Bycatch issues in Longlining

Fisheries and Sustainability of the Ocean

Environmental Impact Studies for Alaska's Groundfisheries

Fisheries Discard in Alaskan Waters: Data and Evidences

Seabirds and Economic Policy: ecological issues of oceans and seabirds.

For details and information please contact the Session Coordinator:

Falk Huettmann

-E-WHALE lab- Inst. of Arctic Biology, Biology and Wildlife Dept.

University of Alaska-Fairbanks

Fairbanks AK 99775 USA

Email fffh@uaf.edu Tel. +1 907 474 7882

Posted on: Thursday, January 26, 2006

Albatross population explosion reported on Midway

By Jan TenBruggencate
Advertiser Science Writer

The population of nesting albatrosses on Midway Atoll this season is the highest since federal officials began counting them 14 years ago — 511,612 nests, which at two birds each, works out to more than a million birds.

Counting unmated birds, the total number of albatrosses at Midway approaches 1.5 million.

The nests at the 1,540-acre Midway Atoll National Wildlife Refuge were counted by teams of volunteers during three weeks in December 2005 and this month. Laysan and black-footed albatrosses also nest on other islands and atolls of the Northwestern Hawaiian Islands, but Midway is the world's largest combined nesting site for the two species.

"We are particularly pleased to see an increase in the number of black-footed albatrosses. This marks the fifth year of increased numbers of black-footed albatross nests on Midway after fairly steep declines in the 1990s," said refuge biologist John Klavitter.

Albatrosses arrive late in the year to nest, and most pairs produce a single egg. The first of those eggs started hatching this month, and most eggs should be hatched by the end of the month.

Both Laysan and black-footed albatrosses are listed by the International Union for the Conservation of Nature as species at risk.

The endangered short-tailed albatross, also known as the golden gooney for the yellow on its head and neck, occasionally occurs in the area, and this year there is one reported at Midway. There are fewer than 1,000 short-tailed albatrosses worldwide, and they primarily nest on Japan's Torishima island.

Reach Jan TenBruggencate at jant@honoluluadvertiser.com.



Albatross counters Annie Marshall and Breck Tyler mark some of the more than half a million nests on Midway Atoll's Sand Island. Albatross numbers at Midway are the highest since counting began.

ROY LOWE | U.S. Fish and Wildlife Service

ANNUAL COUNTS

Laysan albatross (nesting pairs):

1991 429,308
1996 387,854
2000 284,604
2001 286,662
2003 441,178
2004 408,133
2005 487,527

Black-footed albatross (nesting pairs):

1991 19,757
1996 21,645
2000 18,485
2001 19,012
2003 20,393
2004 21,829
2005 24,085

North Pacific Fishery Management Council

Stephanie Madsen, Chair
Chris Oliver, Executive Director



605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone (907) 271-2809

Fax (907) 271-2817

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December 19, 2005

Kaja Brix
Assistant Regional Administrator
Protected Resources Division
Alaska Region
National Marine Fisheries Service
ATTN: Lori Durall
P.O. Box 21668
Juneau, AK 99802

Dear Ms. Brix:

The North Pacific Fishery Management Council has reviewed the Proposed Rule to revise critical habitat for the northern right whale (Federal Register Vol. 70 No. 211 November 2, 2005). The Proposed Rule identifies two areas in the North Pacific, one in the eastern Bering Sea and another in the Gulf of Alaska south of Kodiak Island, which would be designated as critical habitat for the northern right whale population that inhabits the North Pacific Ocean. The Proposed Rule provides an analysis of the factors the National Marine Fisheries Service (NMFS) considered in the CH designation, and provides a Primary Constituent Elements analysis that recognizes the importance of dense concentrations of copepods as prey for northern right whales. The analysis identifies as CH those areas in the eastern Bering Sea and Gulf of Alaska where northern right whales have been sighted since their listing under the Endangered Species Act, and by proxy the sightings of these whales serves as an indirect indication of the likely presence of these important copepod species.

At its December 2005 meeting, the Council received staff reports on the proposed CH designation for northern right whales, and received comments from its Scientific and Statistical Committee and members of the public. The Council provides the following comments.

The Proposed Rule lists areas where the agency seeks information. The Council's comments fall under two of these general topic areas:

1. Current or Planned Activities in the Areas Proposed as CH and their Possible Impacts on Proposed CH
2. Any Foreseeable Economic or other Potential Impacts Resulting from the Proposed CH Designations

The Council, in conjunction with the NMFS, manages the groundfish fisheries that are prosecuted in marine waters offshore Alaska, including the proposed CH areas. In cooperation with the State of Alaska, NMFS also manages certain crab fisheries that occur in the proposed eastern Bering Sea CH area, particularly the Bristol Bay red king crab fishery. The groundfish fisheries include longline, pot, and trawl fisheries. In 2004, approximately 22,117 mt of groundfish were harvested by longline gear in the eastern Bering Sea CH area and 1,629 mt from the Gulf of Alaska CH area. In 2004, the trawl groundfish harvests from the eastern Bering Sea CH area were approximately 774,097 mt and from the Gulf of

S:\4GAIL\Backup of Right whale CH.wbk

Alaska CH area were about 14,830 mt. These large harvest amounts are from fisheries that include pollock, Pacific cod, sablefish, yellowfin sole, rock sole, other flatfish species, and sablefish. The Bristol Bay red king crab fishery in 2004 was almost wholly prosecuted in the eastern Bering Sea CH area with a harvest of about 15,353,000 pounds.

The Council also makes allocation recommendations for the Pacific halibut fishery, which is largely managed by the International Pacific Halibut Commission. In 2004, the harvest of halibut in the eastern Bering Sea CH area was approximately 24,499 pounds and about 1,604,978 pounds from the Gulf of Alaska CH area.

In terms of foreseeable economic impacts from the proposed CH designations, the Council realizes that current fishing activities have no impact on the Primary Constituent Elements of CH – that is, the copepod species and aggregations upon which northern right whales feed. However, we do want to stress the critical importance of the fisheries that occur within these areas. The net values of these fisheries for 2004 were approximately:

	Eastern Bering Sea CH Area	Gulf of Alaska CH Area
Halibut (ex vessel value)	\$43,000	\$4,400,000
Groundfish fixed gear (first wholesale value)	\$24,284,793	\$2,561,651
Groundfish trawl (first wholesale value)	\$569,419,378	\$11,544,795
Crab (ex vessel value)	\$72,500,000	

Also, the Council notes that while these fisheries are prosecuted almost year around, much of the fishing activity in both the eastern Bering Sea and Gulf of Alaska occurs in the winter months when northern right whales are likely absent from these CH areas. We understand there are data available that suggest right whales may be in the eastern Bering Sea primarily during the spring and summer months, although right whale vocalizations have been detected as late as early December. Given the importance of the seasonal aspects of right whale use of the proposed CH areas, the Council urges NMFS to consider this issue when developing the final rule.

The Council has prepared a package of information that summarizes the various fisheries that occur in the proposed CH areas in the eastern Bering Sea and Gulf of Alaska, and requests that this information be included in the record for the proposed rule. This information includes fishery effort maps, harvest amounts by time of year, and economic value to fishermen, processors, and some comments about affected communities. This document is attached.

The Council's Scientific and Statistical Committee (SSC) also reviewed the Proposed Rule and has recommended that information be included in the Final Rule on the seasonal occurrence of right whales in the habitat areas proposed to be designated as CH. Available scientific survey data document right whale sightings, by date, in these areas, as well as acoustic information on right whale vocalizations in the North Pacific, particularly the eastern Bering Sea. To what extent these acoustic recordings can be translated into specific locations may be problematic, but the Council encourages NMFS to include available information on the seasonal presence of right whales in the areas it proposes as CH.

The SSC also recommended that NMFS consider reviewing available photographs taken during North Pacific aerial or vessel-based marine mammal surveys for evidence of gear interactions with right whales. Although there are no known adverse interactions between right whales and fisheries in the North Pacific, presence or absence of scars or other marks could add additional documentation of this.

The Council also recommends that NMFS consider another comment from the SSC. The SSC notes that the copepod favored as prey by the right whale, *Calanus marshallae*, is thought to require an early, ice-associated bloom to ensure strong recruitment in spring. But recent warm water and lack of ice in the Bering Sea has possibly reduced the availability of right whale prey in the southeastern Bering Sea, including much of the area designated as CH. If these warm conditions persist in future years, this habitat may shift northward.

After the Council's December 2005 meeting adjourned, representatives from several sectors of the groundfish fishing industry submitted additional information to the Council on fishing activity in the eastern Bering Sea proposed CH area. Their analyses of data on the rock sole, flathead sole, and Pacific cod fisheries in this CH area indicate that the catch and value could be larger than that shown in our analysis based on a broader look at historical fishing patterns. Their view is that the potential impact of any change in fishing regulations that might affect the eastern Bering Sea northern right whale CH area could be even larger than reported in this letter. Industry will likely submit their comments to NMFS separately.

Finally, the Council notes that the commercial fishing industry in the North Pacific has taken a proactive approach to reducing potential negative interactions between fishing vessels and right whales. This voluntary initiative includes the design and production of an educational handout to assist fishers in identifying right whales and providing advice on appropriate responses when encountering right whales. While there are no known instances of adverse commercial fishery interactions with right whales in the North Pacific, the Council supports such a proactive stance on the part of the industry in Alaskan waters.

Thank you for the opportunity to comment on this proposed rule.

Sincerely,

Stephanie D. Madsen

Stephanie Madsen
Chair

Cc: Sue Salvesson, Chris Oliver

Right Whale Critical Habitat PR**AGENDA B-7(I)
FEBRUARY 2006****From Rick Steiner <afrgs@uaa.alaska.edu>****Date Friday, December 30, 2005 1:29 pm****To 0648-AT84-NPRWCH@noaa.gov****Subject Right Whale Critical Habitat PR**

December 30, 2005

**Ms. Kaja Brix
Assistant Regional Administrator
Protected Resources Division
Alaska Region, NMFS
Attn: Lori Durall**

Dear Ms. Brix,

I appreciate the opportunity to provide brief comments in response to the NMFS Proposed Rule / request for comment on the Revision of Critical Habitat for the Northern Right Whale in the Pacific Ocean. As I have requested via my 12/16/05 e-mail to you that the agency hold public hearings on the Proposed Rule, my comments here will be very brief in expectation that I and others will have the opportunity to comment in more detail at such hearings.

In brief, I feel that the proposed critical habitat designation is too small to effectively protect this critically endangered population of whales, and that the proposed CH area must be expanded. Due to the critical status of the population; the considerable uncertainty with regard to population status, distribution, and habitat use; and the extensive risks to recovery posed by industrial uses of the region, I feel that an area approximately twice the size as that proposed be included in the CH designation. Further, I suggest that the highest and best use of the CH area be to protect and enhance the recovery of Right Whales, and that all other uses of the region become subordinate to Right Whale conservation and recovery.

This is clearly the agency's legal mandate, as well as the overriding public interest.

I will offer more in-depth comments on the Proposed Rule when/if I have the opportunity to do so in the requested public hearing.

Sincerely,

**Richard Steiner, Professor and Conservation Specialist
University of Alaska Marine Advisory Program
afrgs@uaa.alaska.edu
907-786-4156**

evaluated that information in relation to information readily available in our files. On the basis of our review, we find that the petition does not present substantial scientific or commercial information to indicate that listing the American dipper in the Black Hills of South Dakota may be warranted. This finding is based on the lack of substantial scientific evidence to indicate that the American dipper in the Black Hills of South Dakota constitutes a valid DPS. Although the population is discrete, neither the information in the petition nor the information readily available in our files constitutes substantial scientific information that the Black Hills dipper population is significantly unique in relation to the remainder of the taxon. Therefore, we conclude that the American dipper in the Black Hills of South Dakota is not a listable entity pursuant to section 3(15) of the ESA. We will not be commencing a status review in response to this petition. However, we will continue to monitor the taxon's population and status and trends, potential threats, and ongoing management actions that might be important with regard to the conservation of the American dipper across its range. We encourage interested parties to continue to gather data that will assist with these conservation efforts. New information should be submitted to the Field Supervisor, South Dakota Ecological Services Office (see ADDRESSES).

The petitioners also request that critical habitat be designated for this species. The petition does not present substantial information that the American dipper is a DPS so we need not address the designation of critical habitat at this time.

References Cited

A complete list of all references is available upon request from the Field Supervisor (see ADDRESSES).

Author

The primary authors of this document are staff at the South Dakota Ecological Services Office (see ADDRESSES).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 19, 2006.

Thomas O. Melius,

Acting Director, Fish and Wildlife Service.
[FR Doc. E6-943 Filed 1-25-06; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Marine Fisheries Service

50 CFR Parts 223 and 224

[Docket No. 060113009-6009-01; I.D. 010506D]

Endangered and Threatened Species; Notice of 90-day Finding on a Petition to List the North Pacific Right Whale as an Endangered Species Under the Endangered Species Act

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

ACTION: Notice of petition finding; request for information; and initiation of status review.

SUMMARY: NMFS announces a 90-day finding regarding a petition to list the North Pacific right whale, *Eubalaena japonica*, as an endangered species under the Endangered Species Act of 1973, as amended (ESA). After review, NMFS finds that the petition presents substantial scientific information indicating that this action may be warranted. NMFS is initiating a review of the status of the North Pacific right whale, and is soliciting data, information, and comment on the subject action.

DATES: To be considered in the 12-month finding, information and comments should be submitted to NMFS by April 26, 2006.

ADDRESSES: Data, information, or comments concerning this petition should be submitted to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- E-mail: 0648-XB41-

NPRW@noaa.gov. Include in the subject line the following document identifier:

North Pacific Right Whale Listing. E-mail comments, with or without attachments, are limited to 5 megabytes.

- Mail: P.O. Box 21668, Juneau, AK 99802.

- Hand delivery to the Federal Building: 709 W. 9th Street, Juneau, Alaska.

- Fax: (907) 586-7012.

- Federal e-rulemaking portal: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, AK 99517, telephone (907) 271-5006, fax (907) 271-3030, Ms. Kaja Brix, NMFS, (907) 586-7235, fax (907) 586-7012; or Dr. Kate McFadden, NMFS, (301) 713-1401, fax (301) 427-2523.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the ESA, as amended (16 U.S.C. 1531 *et seq.*) requires that NMFS make a determination as to whether a petition to list a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If NMFS finds that substantial scientific information is presented, it is required to promptly commence a review of the status of the species involved if one has not already been initiated.

NMFS has made a 90-day finding on a petition to list the North Pacific right whale. The petition, dated August 16, 2005, was submitted by the Center for Biological Diversity, P.O. Box 40090, Berkeley, CA 94704-4090, and was received by NMFS on August 19, 2005. Petitioner requests NMFS to list the North Pacific right whale as a new species, *Eubalaena japonica*, and to designate the species as endangered under the ESA. Its request is based, in part, on recent scientific information which establishes a new taxonomic classification for the right whale. This reclassification would recognize the North Pacific right whale as the new species *E. japonica*.

NMFS has reviewed the petition, the literature cited in the petition, and other literature and information available in NMFS files. On the basis of that information, we find the petition presents substantial scientific information indicating that the requested action may be warranted. NMFS' finding is based in part on recent scientific papers recognizing the North Pacific right whale as genetically distinct from the North Atlantic right whale, as well as recent findings of the International Whaling Commission on the subject. We request any information regarding the taxonomy and status of the North Pacific right whale, its habitat, biology, movements and distribution, threats to the species, or other pertinent information. A copy of the petition may be viewed at the NMFS website: <http://www.fakr.noaa.gov/protectedresources/whales/default.htm>

Authority

The authority for this action is the ESA, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 20, 2006.

John Oliver,

*Deputy Assistant Administrator for
Operations, National Marine Fisheries
Service.*

[FR Doc. E6-1007 Filed 1-25-06; 8:45 am]

BILLING CODE 3510-22-S



Fisheries Depredation by Killer and Sperm Whales

Behavioural Insights, Behavioural Solutions

Hosted by the Vancouver Aquarium



Announcement

Symposium on Fisheries Depredation by Killer and Sperm Whales: Behavioural Insights, Behavioural Solutions.

October 2-5, 2006, British Columbia, Canada www.depredationsymposium.org

Fisheries depredation (removal of fish from fishing gear) by toothed whales is a widespread problem in many oceans of the world. The negative impacts of depredation include economic losses to fishermen, increased pressure on fish stocks, and injury and mortality of whales due to deterrent methods, entanglement, or accidental hooking. By providing a novel food supply, depredation also has the theoretical potential to cause whale populations to increase beyond their natural carrying capacity, and for previously existing behaviours related to hunting and seasonal movements to be lost.

In 2002, a workshop in Samoa produced a report entitled Interactions between Cetaceans and Longline Fisheries, which focuses on the South Pacific and contains background papers on specific fisheries affected by depredation. The report provides general recommendations regarding methods for reducing depredation, improving data collection, identifying whale species involved in depredation, and increasing the awareness of depredation among governmental and non-governmental agencies. The impacts of depredation on fish stocks and whale populations were not discussed in detail at the Samoan workshop.

Symposium Objectives

The symposium will focus on killer and sperm whales, and will build on the progress made in Samoa. The objectives of the symposium are:

A) *To broaden understanding of:*

- The cues and behaviours whales use to locate gear and remove fish.
- The variability of depredation behaviours within and between species.
- The spread of depredation between groups of whales.
- The extent of the losses resulting from depredation.
- The implications of depredation for fisheries management.

B) *To produce specific guidelines for the fishing industry and fisheries management agencies on:*

- How fishing operations can be modified to reduce or eliminate depredation
- Preventing depredation from spreading to new fisheries



Fisheries Depredation by Killer and Sperm Whales

Behavioural Insights, Behavioural Solutions

Hosted by the Vancouver Aquarium



Participants

Participation in the symposium will be by invitation, with the number of participants limited to 80 or fewer to allow for efficient discussion and exchange of ideas. Delegates will include:

- Researchers with expertise on sperm or killer whale populations involved in depredation.
- Individuals responsible for fisheries and marine mammal conservation and management.
- Fishermen with direct experience of killer and sperm whale depredation.
- Representatives of fishing companies and other organisations that have specific knowledge of depredation.

The symposium will take place over four days at a conference and resort facility in a remote location (Pender Island, British Columbia) to promote focused discussion and problem solving in an environment with few distractions.

Preliminary Schedule

The first part of the symposium will consist of presentations focused on:

- a) Aspects of natural behaviour and social organisation of killer and sperm whale populations involved in depredation.
- b) Case-history examples of killer and sperm whale depredation with special emphasis on the behaviour of the whales involved and associated changes in their social structure, ecology, or demography.
- c) Impacts of depredation on the fishing industry.
- d) Methods of passive deterrence, including modification of fishing behaviours, timing, and /or gear.
- e) Methods of active deterrence.
- f) Examples of successful measures used to reduce conflict between humans and species other than cetaceans.

These presentations will be followed by a half-day break.

The second part of the meeting will comprise in-depth, workshop-style group discussions focused on reducing the extent of the problem where it currently exists, limiting its spread to other fisheries and other regions, and producing guidelines for fishermen and fisheries managers affected by killer and sperm whale depredation. Participants will have an opportunity to propose specific workshop topics prior to the meetings and to distribute background materials before or during the symposium.

Final Product

Participants will be asked to contribute to a symposium report document, which will include summarized versions of the presentations, reports of the workshop discussion groups, and a set of specific guidelines for fishermen, fisheries managers, and policy makers.

VANCOUVER
AQUARIUM



UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 1315 East-West Highway
 Silver Spring, Maryland 20910
 THE DIRECTOR

JAN AGENDA B-7
 FEBRUARY 2006
 Supplemental

JAN 24 2006

RECEIVED
 JAN 30 2006

N.P.F.M.C.

Mr. Dave Benton
 Marine Conservation Alliance
 P.O. Box 20676
 Juneau, AK 99802

Dear Mr. Benton:

At the October 2005 meeting of the North Pacific Fishery Management Council, the Marine Conservation Alliance (MCA) and NOAA's National Marine Fisheries Service unveiled a joint initiative to protect the North Pacific right whale, one of the world's most endangered whales. The focus of this initiative is to initiate an educational campaign to inform the fishing fleet and the public about right whales and the need to protect them. I want to express my heartfelt thanks to the MCA for their support of this project. When NOAA and industry groups work together on an important project like this, it shows Congress, the environmental community, and the rest of our constituents that we are trying to get a handle on many of the difficult problems facing us in terms of managing for healthy marine ecosystems that contribute to the social and economic welfare of the United States.

I am particularly pleased with the production of a North Pacific Right Whale Mariner Advisory. The advisory provides notice to mariners and federal fishery observers that the whales are highly endangered, describes the whales, and includes a chart of all sightings since 1941. The guide includes a list of DO's and DONT's for captains navigating fishing vessels and the back of the flyer has comparative photographs of right whales, humpback whales, and gray whales to ensure proper identification. The production of five thousand North Pacific Right Whale Mariner Advisories, which will be delivered to vessels fishing off Alaska, will certainly help inform an important constituent group about the importance of protecting this species in the North Pacific. I also strongly support the production of copies that will be translated into Russian and Japanese and provided to fleets around the Pacific Rim as well. If we can provide assistance in the translation or distribution of these "foreign" flyers, please don't hesitate to ask for my help.

Sincerely,

William T. Hogarth

William T. Hogarth, Ph.D.

THE ASSISTANT ADMINISTRATOR
 FOR FISHERIES





UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
505 L STREET, SUITE 306

JAN 2 2006
01/27/06
N.P.F.M.C.

Mr. Chris Oliver
Exec. Dir.
North Pacific Fisheries Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2253

Re: National Marine Fisheries Service Steller Sea Lion and Northern Fur Seal
Research Environmental Impact Statement

Dear Sir/Madame:

The National Marine Fisheries Service (NMFS) is beginning to prepare an Environmental Impact Statement (EIS) associated with administering grants and issuing permits to facilitate research on Steller sea lions and northern fur seals. The purpose of this letter is to invite you and your agency to participate in the EIS process, and to provide some background information on both Steller sea lion and northern fur seal research and the process of preparing an EIS. NMFS recognizes the knowledge and expertise within your agency and welcomes your participation in this effort.

The process of preparing the EIS formally began with publication of the Notice of Intent to prepare the EIS issued on December 28, 2005. The process will take approximately 18 to 24 months and should be completed in September 2007. Public scoping and agency meetings were held in Anchorage, Alaska; Seattle, Washington; and Silver Spring, Maryland. In addition, we would like to set up a specific teleconference on February 7, 2006, for additional agency scoping. The purpose of the call is to brief you and other organizations on preparation of the EIS and solicit comments and suggestions. If you would like to participate in this teleconference, please notify Tammy Adams of your availability by contacting her by phone (301-713-2289 x124) or e-mail (tammy.adams@noaa.gov).

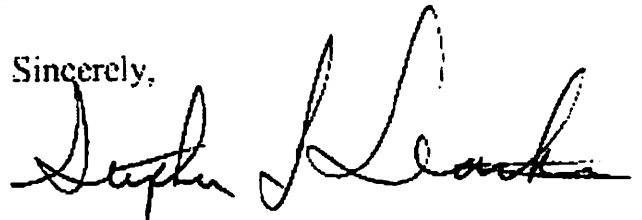
If you are not able to participate in this meeting, a range of opportunities for broader public participation will be provided throughout the process of preparing the EIS, including public meetings, newsletters (which you will receive), a project web site (<http://www.nmfs.noaa.gov/pr/permits/eis/steller.htm>), and hearings at key project milestones. The deadline for submitting scoping comments to NMFS is February 25, 2006.

A brief summary of the project area and purpose and need is presented below:

- **Project Area** – NMFS is responsible for management of Steller sea lions (*Eumetopias jubatus*) and northern fur seals (*Callorhinus ursinus*), under the authority of the Endangered Species Act (ESA; 16 U.S.C. 1531 et seq.) and the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 et seq.). NMFS administers grants and issues permits to conduct research on Steller sea lions and northern fur seals throughout their range in the United States.
- **Purpose of the EIS** – To collect information needed to understand the reasons for the population declines and to help management and conservation efforts such that the populations recover and can be upgraded from their endangered, threatened, or depleted status.
- **Preliminary Issues to Address** – NMFS has identified several issues that the EIS should address: Types of Research Needed, Level and Effectiveness of Research Efforts, Coordination and Monitoring of Research, Qualifications of Researchers, Effects of Research on Marine Mammals, and Alternative Methods for Research

The EIS will be programmatic in nature to evaluate both pending and future permit applications. It will identify potential impacts that alternatives described in the EIS could have on the environment and identify appropriate measures to mitigate those impacts. The EIS will also fulfill NMFS legal obligations regarding administration of funds and permits for that research under the authority of the ESA, MMPA, NEPA, and other applicable regulations. There will be specific opportunities to participate in scoping for the EIS and reviewing the draft EIS. We look forward to working with you through the completion of the project. If you have any questions, please feel free to contact me at the address below, or by telephone at (301) 713-2289.

Sincerely,



Stephen L. Leathery
Chief, Permits, Conservation, and
Education Division
Office of Protected Resources
NMFS 1315 East-West Highway
Silver Spring, MD 20910

Attachments: Steller Sea Lion
Distribution Map; Northern Fur Seal
Distribution Map

Figure 1. Steller Sea Lion Range Map

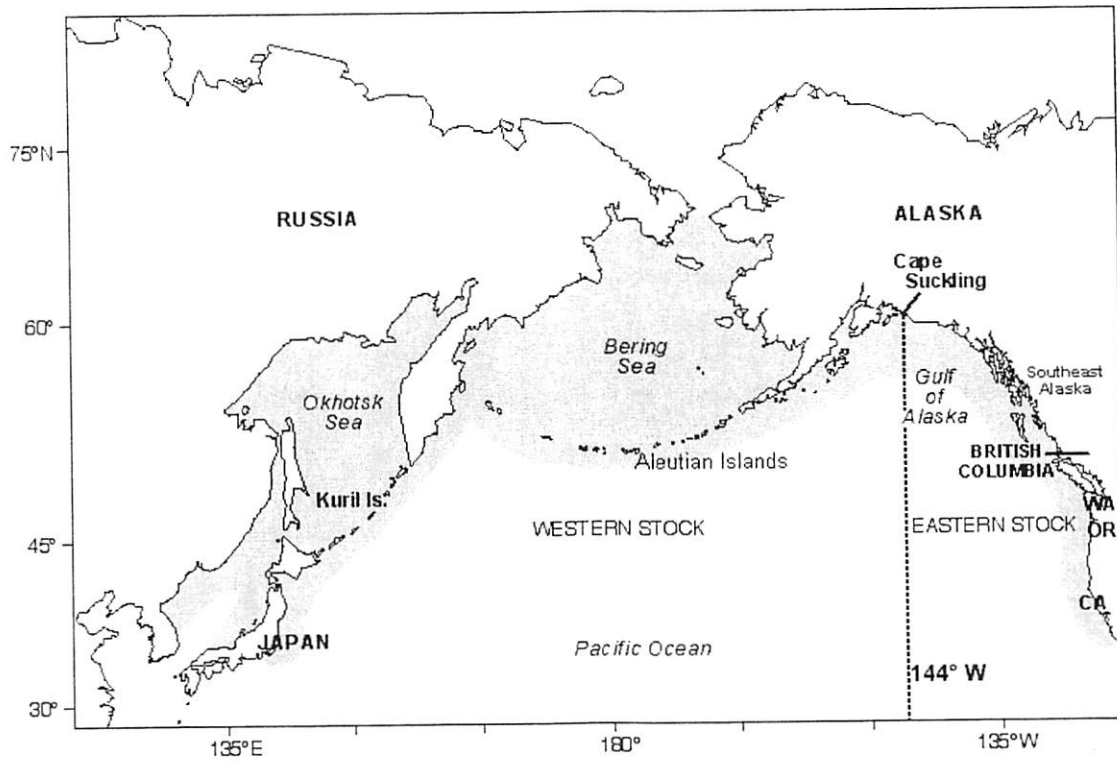


Figure 2. Northern Fur Seal Range Map

