AGENDA B-9
DECEMBER 2006

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver
Executive Director

ESTIMATED TIME
1 HOUR

DATE: November 27, 2006

SUBJECT: Protected Resources Report

ACTION REQUIRED

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

BACKGROUND

A. List of Fisheries for 2007

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 Council has previously commented on these notices, and the Council provided extensive comments on the LOF for 2005 (Item B-9(a)). The Council did not comment on the LOF for 2006. The Proposed Rule for the LOF for 2007 will likely be published just prior to or during the December 2006 Council meeting. NMFS and Council staff will provide copies of the Federal Register notice when it is available. As we understand it, the draft LOF for 2007 provides for no changes (from the LOF for 2006) affecting Alaskan Federal groundfish fisheries. Therefore, the following fisheries will remain in Category II for 2007:

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

The comment period for the draft LOF for 2007 will extend 90 days after the date of publication. Therefore, the Council may wish to schedule a review of the LOF for 2007 at its February 2007 meeting. NMFS staff would attend and answer questions. As background for such a review, Dr. Robyn Angliss, National Marine Mammal Laboratory, has prepared a discussion paper on how the agency has responded to previous Council and SSC comments. That document is attached as Item B-9(b). Dr. Angliss could attend the February 2007 Council meeting to answer questions about the methodology and the draft LOF for 2007.

B. Update on SSL Mitigation Committee Work on Proposal Ranking Tool

At its October 2006 meeting, the Council received a briefing on recent meetings of its Steller Sea Lion Mitigation Committee (SSLMC). That Committee has been working to complete a Proposal Ranking Tool (PRT), which has been developed per SSC recommendations. The PRT will be used to evaluate

proposals for changes in SSL protection measures in the pollock, Pacific cod, and Atka mackerel fisheries. At the October meeting, the SSC received a detailed report on progress made to revise the PRT and the SSC subsequently provided additional comments and suggestions for improving the PRT. The SSLMC met on October 30-November 1, 2006 at the Alaska Fisheries Science Center to consider the SSC comments and to revise the PRT. The SSLMC updated the PRT and developed a rationale and documentation for the hierarchy of the PRT; a detailed discussion of the SSLMC's work is provided in the draft minutes of that meeting (Item B-9(c)). The SSLMC intends to meet in Anchorage on January 8-9, 2007 to finalize the documentation of the PRT model, and to prepare a report to the Council for SSC review at the February 2007 meeting. Once this review is completed, the SSLMC will be ready to review proposals. However, the Committee also will require the draft Biological Opinion (BiOp) to help guide the SSLMC in the proposal review process. Additional information on the schedule for development of the draft BiOp is provided in another part of this Action Memo. When available, the draft BiOp and the PRT will be used by the SSLMC to review proposals and develop recommendations for Council review.

C. Steller Sea Lion and Northern Fur Seal Research Permits

NMFS has recently notified potential Steller sea lion (SSL) and northern fur seal (NFS) researchers that the EIS on the effects of research activities on SSLs and NFSs, if it stays on schedule, will likely be completed and a Record of Decision issued by early summer 2007. The agency notes that, barring further legal challenge, SSL and NFS research could begin shortly after that date. However, researchers who intend to apply for research permits have been notified that they must expedite submission of permit applications so that NMFS can conduct the necessary review and process the applications in a timely manner. NMFS has prepared a fact sheet on the EIS process and answers to questions about the future permitting of SSL and NFS research permits (see Item B-9(d)).

D. Update on FMP Consultation and Preparation of draft Biological Opinion

The NMFS has notified the Council that the schedule for completion of the draft BiOp has changed (see letter to the Council dated November 21, 2006 (Item B-9(e)). According to the new schedule, NMFS will complete the draft BiOp and have it ready for Council and public review by early June 2007. NMFS states that the BiOp would be presented to the Council, AP, and SSC at the June 2007 meeting. This would then be followed with a review by the SSL Mitigation Committee and the public over the summer. At the October 2007 meeting the Council would receive comments and recommendations for changes in SSL protection measures from the SSLMC, and would hear public comments.

NMFS provides additional information about the BiOp schedule and outlines the rationale for this schedule change in their letter to the Council. NMFS staffs from SF and PR will be available to answer questions.

North Pacific Fishery Management Coul

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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 NEPA 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 NEPA document, take public comment, and to provide comments to NMFS; we also would like another opportunity to comment on the LOF for 2005 after reviewing the NEPA analysis.

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 provided in the attached, and the Council requests that NMFS consider them in its consideration 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 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

Attachment

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.**

Information addressing concerns raised by the North Pacific Fishery Management Council Scientific and Statistical Committee regarding analyses of data in support of proposed changes in fishery classifications in the List of Fisheries for 2005

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.

This comment was made by both the SSC and in a public comment made by the NPFMC to the agency on the proposed List of Fisheries for 2005. The official response to this comment was made to in the Federal Register notice in the final List of Fisheries for 2005 (71 FR 247; January 4, 2006) and is repeated below:

> 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.

Supporting information: Guidelines for developing Stock Assessment Reports for marine mammals were initially developed in 1994 and revised in 1997 and 2005. Each version of the guidelines was made available for public review and comment through the Federal Register. The current guidelines[1] (page 8) provide flexibility in how many years of data should be used when estimating incidental mortality/serious injury levels. The goal is to use a sufficient number of years to reduce the variability of the estimate so that it has a CV of under 0.3, but in general not more than 5 years of data should be averaged.

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[1] The most recent version of the guidelines for developing Stock Assessment Reports under the Marine Mammal Protection Act is at: http://www.nmfs.noaa.gov/pr/pdfs/sars/gamms2005.pdf

The general rationale for not using more than 5 years of data is that the agency should be using the best information available on levels of incidental serious injury and mortality (called "bycatch" in the FR notice text) to manage incidental commercial fishery serious injury and mortality levels. It takes approximately 1.5-2 years to collect and analyze a new year of observer data on incidental serious injury and mortality levels, incorporate the information into a draft and final Stock Assessment Report, and then use the information in a proposed and final List of Fisheries. Thus, a proposed List of Fisheries for 2007 is most likely based on information contained in the draft Stock Assessment Reports from 2006, which include incidental serious injury and mortality data from 2001-2005. Because commercial fisheries are constantly adapting to new gear technologies, different fish distributions, and new regulations, and because marine mammal distribution and behavior change regularly, it seems preferable to use recent data rather than data from the 1990s to assess the level of marine mammal serious injury and mortality. Further, if the Stock Assessment Reports and the List of Fisheries relied on, for instance, 10 years of data on incidental serious injury and mortality levels, it might be 10 years before incidental mortality and serious injury events that happened many years ago are no longer considered for fisheries classification.

As stated in the Federal Register notice, we cannot use mortality/serious injury data prior to 1998 for federally-regulated fisheries in Alaska because the data cannot be separated into gear type and target fishery. However, as we go forward, we may consider the use of longer data sets to characterize the fishery if we are certain that the fishery has not changed substantially and if the use of more data substantially improves the precision of the estimate.

2) The need for observers to estimate the frequency of serious injury and mortality in state-managed fisheries.

This comment was made by both the SSC and in a public comment made by the NPFMC to the agency on the proposed List of Fisheries for 2005. This issue is related to the use of dated observer information from certain state fisheries that may no longer be relevant to current rates of marine mammal serious injury and mortality levels. A similar public comment was made to the agency on the proposed List of Fisheries for 2005. The official response to this comment was made to in the Federal Register notice in the final List of Fisheries for 2005 (71 FR 247; January 4, 2006) and is repeated below:

> 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.

Supplemental information: NMFS realizes the need to collect information on state fisheries in order to accurately determine the level of serious injury and mortality of marine mammals incidental to these fisheries. The Alaska Region has been implementing observer programs in state fisheries as resources have allowed. Since 1999, the following fisheries have been observed: Cook Inlet salmon set gillnet (1999, 2000), Cook Inlet salmon drift gillnet (1999, 2000), and Kodiak salmon set gillnet (2002, 2005). As a direct result of these programs, the Cook Inlet salmon set gillnet fishery was reclassified from Category II to Category III.

In 2006, the AKR conducted a feasibility study in preparation for implementing an observer program for the Yakutat salmon set gillnet fishery in 2007 and 2008. The AKR plans to implement an observer program for the Southeast Alaska salmon drift gillnet and salmon purse seine fisheries in 2009 and 2010, and will be developing the sampling design over the next two years in preparation for this effort.

Although much work has clearly been accomplished, there are many state fisheries in Alaska that have not been observed, and will not be observed in the foreseeable future given the available level of resources. Until old observer data are replaced with new observer data, or until a strong case can be made that the past levels of incidental serious injury and mortality are inconsistent with what is currently known about the fishery, data from past observer programs will be incorporated in the SARs and used for fishery classification purposes. The AKR is investigating the use of proactive, cooperative techniques to use in lieu of observer programs to manage interactions between marine mammals and commercial fisheries for those fisheries which are unlikely to be observed, or those which are poor candidates for observer programs due to vessel size, fleet size, or other fishery-specific factors.

3) The assignment of the observed mortalities to more than one marine mammal stock per occurrence is problematic. NMFS should investigate different ways to analyze fisheries interactions with overlapping marine mammal stocks.

This concern was raised by both the SSC and in multiple public comments to the agency on the proposed List of Fisheries for 2005, and was included in the letter from the NPFMC. The official response to this comment was made to in the Federal Register notice in the final List of Fisheries for 2005 (71 FR 247; January 4, 2006) and is repeated below:

> 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.

Supplemental information: In the analysis for the 2005 proposed List of Fisheries, the agency's lack of ability to determine whether killer whale and humpback whale takes in fisheries of the Bering Sea resulted in having to assess the impact of those takes to multiple stocks. In the intervening period between the publication of the proposed and final List of Fisheries for 2005, NMFS obtained results of genetics analyses for most of the killer whales killed incidental to the flatfish and pollock trawl fisheries, thus enabling the agency to definitively assign most of the killer whale takes to a particular stock. Thus, by the time the final List of Fisheries for 2005 was published, it was clear that takes which occurred incidental to the BSAI flatfish trawl fishery were of resident killer whales, and takes which occurred incidental to the BSAI pollock trawl fishery were of transient killer whales.

Unfortunately, there will likely be some future situations in which a genetic sample from a marine mammal incidentally caught in an area of known marine mammal stock range overlap will not be available, and assessments of the impact of that bycatch must again be made for multiple stocks. We will try to reduce these situations as much as possible by continuing to take every opportunity to collect and analyze genetics samples from marine mammal incidental takes in order to assign takes to the appropriate stocks. In addition, advances in our knowledge of stock distribution, such as those resulting from a basin-wide survey of stock structure and abundance of humpback whales, have the potential to further define stock distribution and may help prevent the need to assess the impacts of takes against multiple stocks.

4) The appropriateness of procedures used to estimate incidents of serious injury and mortality for unobserved hauls and fisheries.

This concern was raised by both the SSC and via multiple public comments to the agency on the proposed List of Fisheries for 2005. The official response to this comment was made to in the Federal Register notice in the final List of Fisheries for 2005 (71 FR 247; January 4, 2006) and is repeated below:

> 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 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 is 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 during the same time period. 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 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 [the event must have been seen by the observer in addition to the crew or captain], or (2) the calculated, rounded ratio estimate is lower than total number mortalities actually seen by observers in all sets on NORPAC (North Pacific federal fisheries observer program) 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.

Supplemental information: Extrapolating a total estimated level of serious injury/mortality from the observed number of serious injuries/mortalities in the same fleet is an accepted procedure that is broadly used in the analysis of other marine mammal serious injury/mortality levels in other fisheries around the country[2]. In no situations, however, are extrapolations made to completely different components of the fleet that are entirely unobserved. For instance, data from the federal observer program are not used to estimate the level of take in the nearshore, state-managed groundfish fleet. Further, estimates of bycatch for one fishery in one stratum (e.g., statistical area 517) are never used to estimate bycatch for that same fishery in another strata (e.g., statistical area 521).

In a very few situations, a serious injury or mortality occurs in a haul that was not pre-selected for monitoring, and this event is included in a total estimate of incidental serious injury and mortality for that species (but not an extrapolated estimate). This is only done when there are no serious injuries or mortalities of a particular species in monitored hauls in a particular stratum. This occurred for the following killer whale mortalities:

* Unmonitored set takes seen by observers used in total estimates:
  one killer whale in the pollock trawl fishery in area 521 (August 20,1999)
  one killer whale in the pollock trawl fishery in area 521 (March 20,2003)
* Unmonitored set takes seen by observers not used in total estimates because takes observed in monitored sets could be used to estimate mortality:
  one killer whale in the flatfish trawl fishery in area 521 (April 22,2004)
* Monitored set takes seen by captain or crew, but not the observer, so not used in total estimates:
  one killer whale in the flatfish trawl fishery in area 517 (August 18,2001)

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[2] For instance, extrapolations from observed marine mammal mortality and serious injury to total estimated marine mammal mortality and serious injury are made for the HI longline fishery, the Northeast sink gillnet and mid-Atlantic gillnet fisheries (Belden et al 2006), and the California drift gillnet fishery (Carretta et al 2004).

These events are not extrapolated to get an estimate for the stratum; instead, the single events are added to extrapolations for other strata to provide a minimal estimate of marine mammal serious injury and mortality.

North Pacific Fishery Management Council
Steller Sea Lion Mitigation Committee Meeting
October 30-November 1, 2006
Alaska Fisheries Science Center, Seattle

Minutes

The North Pacific Fishery Management Council's Steller Sea Lion Mitigation Committee (SSLMC) convened at the Alaska Fisheries Science Center in Seattle, October 30-November 1, 2006. Members attending this meeting were: Larry Cotter, Chairman, and Jerry Bongen, Julie Bonney, Sam Cotten, Ed Dersham (non voting at this meeting), Kevin Duffy, John Gauvin, John Henderschedt, Dan Hennen, Earl Krygier (State of Alaska), Terry Leitzell, Dave Little, Steve MacLean, and Art Nelson. Also attending were Bill Wilson (NPFMC Staff), Kristin Mabry and Melanie Brown (NMFS AK Region Staff), Doug DeMaster and Lowell Fritz (AFSC Staff), and members of the public.

Chairman Cotter introduced the SSLMC to the agenda (attached) and two items were added: a presentation from Dr. DeMaster on killer whale predation data, and an overview by John Gauvin on the status of work by the Experimental Design Committee. The minutes from the September 12-13, 2006 SSLMC meeting were approved. Chairman Cotter and Bill Wilson provided the Committee with an update from the Council's October 2006 meeting in Dutch Harbor and a review of recent Board of Fisheries (BOF) actions. Chairman Cotter reported that the Council was interested in the SSLMC's review of the preliminary draft Biological Opinion (BiOp) chapters, and some of the issues raised in that document. Mr. Cotter noted particularly that there is concern over the preliminary findings in the BiOp that considers killer whale predation unlikely to have been a contributor to the SSL decline and unlikely to be inhibiting recovery, and the finding that fisheries are a likely contributor to the decline and a likely factor inhibiting the SSL recovery. Cotter raised these as two major issues of concern, and felt that the SSLMC concurred with this. Discussion among the SSLMC indicated a general consensus of concern in these two areas.

Chairman Cotter also reported that the BOF has recently approved a 3,000 mt pollock fishery in State waters in the Adak area; that fishery would occur in some currently-closed SSL protection areas. Dr. DeMaster reported that this action has raised some concerns with NMFS, particularly a concern that if this fishery proceeds, it would constitute a change in the baseline upon which the agency is currently consulting, and may require a new consultation. The action may also require an analysis and consultation under Section 10 of the ESA given the potential need for an authorization for take of SSLs since that authorization would not be part of the current Incidental Take Statement contained in the current BiOp. The Agency is also concerned over the potential litigation aspects of this issue. Confounding this issue is the pending Exempted Fishing Permit (EFP) application before the Agency and the Council; this also requires a consultation since it involves a pollock fishery in the same area and in some areas currently closed to pollock trawling as a SSL protection measure. Dr. DeMaster outlined some of the options the Agency is considering for possible action. The Committee discussed

ramifications of the BOF action and some of the alternatives the Agency is considering. Additional meetings and discussions among the BOF and the Agency will likely continue to clarify such issues as total tonnage of pollock that would be allowed under the combined State fishery and the EFP fishing activity, and the start dates for the BOF fishery. These activities, and additional consultations, will likely affect the ongoing FMP level consultation, shifting the schedule for completion of the draft BiOp into the future. Additional updates on these issues will be brought to the Council in December.

Killer Whale Predation

Dr. DeMaster presented a set of data that summarize the potential levels of killer whale predation on SSLs and other marine mammals in the North Pacific. These data are based on bioenergetics modeling work by Dr. Terrie Williams and her colleagues at the University of California at Santa Cruz and by Dr. Paul Wade and his colleagues at the National Marine Mammal Laboratory (NMML). A handout was provided. Essentially, the two sets of data are two models of potential levels of predation on SSLs, based on the numbers of transient killer whales believed to occur in the North Pacific, and the magnitude of this removal from the wSSL population annually relative to other sources of SSL mortality. The data conclude that the annual mortality of SSLs from killer whales under the Williams model is a range of 1853 to 5096 SSLs and under the Wade model is a range of 587 to 1627 SSLs. The SSLMC asked questions and discussed these data in light of conclusions reached in the preliminary draft chapters of the BiOp and in light of their understanding of the numbers of transient killer whales present in the region, the percentage of their diet that is comprised of SSLs and other marine mammals, and killer whale migratory behavior. Dr. DeMaster noted that the Agency believes that up to 25% of the annual mortality of wSSLs could be caused by killer whale predation, not enough to be a major contributor to the decline and lack of recovery but certainly a possible factor. The degree to which the Agency believes this predation is inhibiting recovery is still under review.

Proposal Ranking Tool (PRT) – SSC Comments

Chairman Cotter introduced the main topic for this SSLMC meeting: continued work on the Proposal Ranking Tool or PRT. The PRT was presented to the Council's SSC in Dutch Harbor, and the SSC minutes will be addressed by the SSLMC during this meeting this week. John Gauvin noted that we now have data on bycatch of other SSL diet items and how we might include these data in the PRT. The SSC was silent on this issue, and the SSLMC likely will consider these data in evaluating proposals, but outside the PRT.

Bill Wilson recapped the SSC comments. Some of these comments are observations and do not require a response, while others are more substantive and the SSLMC agreed should be considered by the SSLMC and the model adjusted accordingly. The SSC noted that this PRT is a tool that can be used to judge proposals, although it is but one of many other tools the SSLMC may use. The SSLMC concurs and has already identified a number of additional tools or sources of information it may used to evaluate proposals.

The SSC comments were reviewed briefly and the following comments were made:

SSC Comment #1. The SSLMC agrees that the PRT will help compare proposals and combinations of proposals.
SSC Comment #2. The Structural Adjust feature in the model is a confusing part of the AHP procedure, and the SSLMC agreed to run proposals and score them with and without the Structural Adjust. This will be a way to test how it affects proposal scores. The Committee discussed being consistent in evaluating proposals – either use this feature or not, but be consistent. Dr. Hennen expressed that this feature may be an artifact of the way the AHP procedure is constructed and that the Structural Adjust could affect one proposal more than another. The SSLMC will run proposals both ways.
SSC Comment #3. The SSLMC agrees it should revisit the issue of ranking a proposal that might affect distance zones around sites and numbers of sites. For example, a proposal that might affect the 0-3 n mi zone around a single SSL site versus another proposal that might affect the 0-3 n mi zone around many SSL sites could be ranked the same; currently any activity in 0-3 n mi is treated equally. The SSLMC will revisit this part of the model. The SSLMC also agrees to sensitivity test the model and to be sure scorings reflect Committee members' intents (and common sense).
SSC Comment #4. This asks for more rationale for how the SSLMC constructed this model and the elements in the hierarchy that were chosen and the weightings given each element in this hierarchy. The SSLMC agreed to develop this rationale.
SSC Comment #5. The SSC suggested that the SSLMC consider the number of SSL sites in a region and perhaps weight impacts on a region that contains more SSLs or SSL sites differently than in an area that contains fewer SSLs or SSL sites. The SSLMC noted that it has discussed this previously, and did not find a justifiable reason to weight such regions as being more or less sensitive. This will be discussed further. The SSC suggestion for investigating data on special or more sensitive SSL sites will be followed as well; the SSLMC suggested that given the lack of data range wide for the wSSL, it might be able to consider such data outside the model.
SSC Comment #6. Fishing rate can be considered an indicator of potentially adverse effects on the SSL prey field (high catch rate, prey reduced accordingly, less food for SSLs), but it also can be considered an indicator of little effect (lots of prey, high catch rate, therefore lots of food available to SSLs). The SSLMC agreed to discuss this further, but suggested that no resolution to this dilemma will be likely unless we obtain input from PR or discuss this further with pollock stock assessment biologists at the AFSC.
SSC Comment #7. The Committee agrees that PR should review the PRT. A report will be provided to PR as soon as it is completed.
SSC Comment #8. The SSLMC recognizes the non-alignment of fishery management area boundaries with SSL census boundaries. The SSLMC consciously has chosen to rank proposals in terms of how they might affect SSL census areas, as opposed to areas receiving TAC allocations, to better provide a tool for evaluating potential impacts on wSSL population subunits. Data on regional SSL trends are summarized by SSL census region. Additional consideration of this issue will occur in this meeting.
SSC Comment #9. The SSLMC will re-look at the node structure of the PRT.
SSC Comment #10. The SSLMC discussed this at length. The Committee previously considered adding more than two seasons to the model, but because of lack of more

refined data by subseason agreed to stay with summer and winter. While a third season encompassing the sensitive period of time, spring, when females are just beginning to wean juveniles, are pregnant and about to deliver pups, and are about to become pregnant, the SSLMC felt that their previous scorings of importance of the summer season included this consideration. The SSLMC also felt that they would require additional data to justify adding a third season, and additional time to reconfigure the structure of the model.

The SSC also provided two additional comments, one suggesting caution in interpreting small differences in scores that might come from comparing proposals using the PRT, and another expressing caution in over weighting proposals that might provide a "management bonus". The latter issue will be considered by the SSLMC, but outside the PRT process. The SSLMC agrees with the SSC's first comment and will be cautious in evaluating scores developed for proposals evaluated using the PRT.

Experimental Design Committee

Mr. Gauvin summarized the discussions that this Committee had several months ago. Essentially, the Committee is stymied at this time and does not have a good suggestion for how to proceed further. The issue is how to design a study that will tease out the effects of fishing on SSLs. A previous idea to monitor nursing female attendance patterns (length of time away from a pup while foraging) in areas where fishing occurs, and does not occur, realistically cannot be developed further. No substantive pollock, cod, or Atka mackerel fisheries occur in such areas (requires fishing during spring and summer months). Other ideas were explored that might be applied to the Atka mackerel fishery, but a suitable measure of effect on SSLs could not be developed. The AI pollock EFP concept is good, but it measures effects on the prey field, not direct effects on SSLs. Using this approach (hydroacoustic surveys of biomass before and after fishing) on Atka mackerel won't work because of its lack of a swim bladder. There may be potential for some kind of experiment involving pollock in the GOA, but this requires more work and discussion; needed is a pollock fishery in the GOA in an area where nursing SSLs can be monitored. The Committee thought doing an experiment in the AI region would be better, to get into areas where SSLs are not responding as well as hoped, but most approaches to monitoring SSLs directly would involve a large scale telemetry project, which is unlikely to be approved in the current climate of concern over tagging SSLs (to wit, the Humane Society litigation). There was some discussion on using any new pollock fishery in the AI as a basis for an experiment since pollock have not been fished in the AI region for 6 or more years; i.e., could a SSL response be measured during and after this AI pollock fishery occurs to compare with SSL data collected during these past years of no pollock fishing.

Preliminary Discussions and Overview of the PRT

The SSLMC was provided an overview of the PRT based on the PowerPoint presentation given to the SSC, AP, and Council at the October meeting in Dutch Harbor. During this presentation, the SSLMC discussed the model in general terms, revisiting the rationale

behind its main structure. The PRT is designed to evaluate a proposal in terms of potential effects on SSLs. The SSLMC determined that this issue could logically be broken down into two main questions: effects of fishing on SSLs directly (by either affecting their food sources or SSLs themselves), or effects of fishing on the prey field. The SSLMC acknowledged that the model could be structured in other ways, but that these two main questions are the most important issues related to fishery effects on SSLs. Those two main elements are weighted about 60:40, although the structural adjust feature in the model revises these proportions to 75:25 (which is presented on the summary graphic in the PowerPoint presentation given to the SSC).

The Committee discussed these proportions. The higher weighting on effects on SSLs is due partly to SSLMC concerns over fishery effects on the *needs* of SSLs – space around sites to forage, food that may vary by season and region, and how many sites occur in a region, among other variables. The effect on SSLs also includes potential effects on SSL access to fish. Dr. DeMaster indicated that this model structure and its ranking of the relative importance of fishery effects are in agreement with the current BiOp, because it answers the question: are fish available to SSLs in terms of localized depletion and overall abundance, with localized depletion being a more important consideration. The Committee discussed how this part of the model addresses how fishing may affect SSLs through disturbance or SSL foraging near sites, and thus addresses competition for prey.

The Committee generally reaffirmed the main structure of the model and the higher weighting for a proposal's potential effects on SSLs. The SSLMC reexamined the main structure of the model

Fishery effects on the prey field. This hierarchy includes three elements: season, % TAC, and duration. Season addresses when a fishery occurs and recognizes that SSLs have different sensitivities to changes in their prey field that may occur within or between seasons. A season element occurs in another part of the PRT, but for different reasons, and thus the PRT does not place double emphasis on season. For future evaluation of proposals, Julie Bonney and John Henderschedt will develop for the SSLMC a data set that describes the actual fishing periods for each fishery in the GOA and BSAI by species and subregion; these data will allow the SSLMC to compare actual fishing periods with the current regulatory periods. The element % TAC is intended to capture seasonal shifts in the removal of prey species and magnitude. Duration addresses length of a fishery as a result of a proposal. The SSLMC believes that fisheries of short duration (less than 3 days) are of less concern since SSLs are not sensitive to such short interruptions in prey availability; this was concluded in the 2000 BiOp also. That conclusion noted that SSLs need to feed constantly, but can withstand interruptions in their prey field for up to 10 days before suffering nutritional problems, and thus disturbance of prey fields for a period of time greater than 10 days would be considered adverse. The SSLMC noted that in many fisheries, removal of prey is likely followed by an immediate replenishment of prey from adjacent areas, and thus considering the removal of fish an adverse impact on SSLs may not accurately depict what occurs in the environment. However, the SSLMC also noted that we do not have a model for determining how fishing affects a prey field.

The SSLMC noted that the PRT does not provide a means to score a proposal in terms of its potential beneficial effects on SSLs or their prey. That kind of evaluation will occur outside the PRT. The SSLMC noted that the PRT considers elements that can be regulated – quota, season dates, and spatial closures. The SSLMC also noted that cooperatives can be beneficial by slowing a fishery, reducing removal rates, etc. – this is another element in fishery management that is not contained in the PRT but can be considered by the SSLMC outside the PRT.

Sensitivity of SSLs to fishing – spatial/temporal. This part of the PRT has three elements: site type, proximity, and % of sites. Site types are from the current list of known SSL rookeries or haulouts, by season, based on NMML survey data and the list provided to NMFS PR for the current consultation. The SSLMC adopted this list as it is the most current knowledge of SSL use of terrestrial sites throughout the range of the wSSL available. The SSLMC discussed how to address a proposal that might affect multiple sites, and how an effect on one site might be compared with an effect on multiple sites. This is addressed in the % of sites element. The proximity element relates to site type and number of sites, since a fishery may differentially affect SSLs depending on how close the activity is to a SSL site. The SSC raised an issue in their comment #3 – the current PRT rates equally an impact on one site and an impact on many sites. The SSLMC revoted on this issue and acknowledged there is logically a difference in impacts on few sites versus impacts on many sites. More detail is provided later in these meeting minutes.

Sensitivity of SSLs to fishing – diet composition. This part of the PRT includes season, subregion, and target species. There is an obvious season component to fishery effects on species that are important in a SSL diet. The importance of pollock, cod, or Atka mackerel to SSLs varies with season based on available scat data. Those data were used by the SSLMC in placing fishery effects on SSL diet in a seasonal context. Season also is partly based on the SSL breeding and nursing phenology; more discussion on this seasonal element is in a later part of these minutes. Regions are from the NMML SSL census data base; the SSLMC acknowledges that fishery effects should be evaluated in regions important to SSL population trends, and that there are known regional differences in SSL diet based on scat analysis. A Pribilof Islands region is included to allow the PRT to evaluate proposals for changes in SSL sites there. Generally, the main Bering Sea is included in the eastern Aleutian Islands area as this SSL subregion is closest in geographic terms and in terms of potential dietary composition. Amak Island is part of the eastern AI region.

The SSLMC discussed at length the importance of all elements in a SSL diet, not just the three target species that were addressed in the current BiOp and current regulations. For example, salmon in the central GOA are very important seasonally but are not regulated by the Council. Arrowtooth flounder are important as well, and are regulated by the Council, but are abundant now and not targeted heavily. The SSLMC will use the data provided by Dr. Sarah Gaichas at the AFSC for a proposal that might have bycatch of elements in the SSL diet that are not the three main target species subject to current regulation.

PRT Rationale and Response to SSC Comments

The SSLMC spent the remaining meeting time on an extensive review of the PRT and to develop statements of rationale for how it has been developed. Kristin Mabry presented a PowerPoint overview of the PRT to orient the Committee to its features and hierarchy. Ms. Mabry developed summary data sheets showing the Committee's previous scorings of each element in the hierarchy. These data were broken down into the three main parts of the PRT: effects on the prey field, effects on SSLs (spatial/temporal), and effects on SSL diet. These data sheets were handed out and provided a roadmap for the SSLMC's work the next two days. To orient the reader of these minutes to the model hierarchy, the SSLMC agreed to review and discuss the PRT from the bottom of the hierarchy up to the top, and look at each of the three main parts of the model separately. This model structure is as follows:

Effects on Prey Field
- Season Affected by the Proposal
  - Summer (within this season)
  - Winter (within this season)
  - Summer to Winter Shift
  - Winter to Summer Shift
- % TAC involved in the Proposal
  - 1-5%
  - 6-10%
  - >10%
  - No Change
- Duration of the Fishery Resulting from the Proposal
  - Shorter
  - Longer
  - Same

Effects on SSLs in a Temporal and Spatial Context
- SSL Site Type Affected by the Proposal
  - Summer Rookery
  - Summer Haulout
  - Summer Other
  - Winter Rookery
  - Winter Haulout
  - Winter Other
- Proximity to Site Involved in the Proposal
  - 0-3 n mi
  - 3-10 n mi
  - 10-20 n mi
  - 20+ n mi in Critical Habitat
  - 20+ n mi Outside CH
- Number of Sites Affected by the Proposal
  - 1-10% (of the sites in the region)

11-25%
26-50%
51-75%
76-100%

Effects on SSL Diet Composition
Season of Year the Proposal May Affect
Summer
Winter
Subregion the Proposal Will Affect
E GOA
C GOA
W GOA
E AI/Bering Sea
C AI
W AI
Pribilof Islands
Target Fishery Involved in the Proposal
Pacific cod
Pollock
Atka mackerel

Public Comment

Chairman Cotter asked for public comment on several occasions. One comment was provided. Dave Fraser raised a question about the correlation between % TAC and proximity. The SSLMC discussed % TAC which means adding TAC or shifting TAC. Fishing in zones, or proximity, is scored independently. This issue was discussed later in the meeting. The SSLMC also rescored the model ranking of effects in zones around SSL sites relative to number of sites affected (the "Fraser argument").

Detailed PRT Review
Effects on SSLs in a Temporal/Spatial Context

Number (Percent) of Sites Affected by a Proposal

The Committee started its review of the PRT at this node in the hierarchy – the lowest level in the spatial/temporal part of the model. The main hierarchical element, Effects on SSLs in a Temporal and Spatial Context, addresses how a proposal might affect SSLs by impacting areas near their terrestrial sites. SSLs may be differentially sensitive to fishery effects depending on the site type (rookery, haulout – each of which may have different concerns depending on season, so there is a seasonal component in this element), by how close the fishing activity might be to a site (using the distance zones developed in the 2001 BiOp and its 2003 Supplement), and the number of sites affected by the fishing activity.

Starting with number of sites affected, the SSLMC felt that the model should evaluate a proposal in terms of how many sites it could impact. The SSLMC acknowledged that the SSL census regions contain varying numbers of haulouts and rookeries, and thus a specific numerical hierarchy may not be appropriate but a percentage of the sites in a region may be more appropriate. Thus, this criterion perhaps should be differentially weighted for the percent of SSL sites affected, with a higher score (more impact) for larger numbers of sites and a lower score (less impact) for fewer (small percentages).

The Committee discussed at length the effects of impacting one or a few sites in the 0-3 n mi zones versus impacting a larger number of sites in the 0-3 n mi zones (or other geographic zones around sites). This was an issue raised by the SSC and by the public – as previously scored, the model gave equal weight (same level of impact) to a proposal that affected a zone around a SSL site where there might be a few sites affected or many sites affected (the Fraser argument). While the SSLMC felt that *any* disturbance in the 0-3 n mi zone would be of highest concern regardless the number of sites involved, they acknowledged that logically there should be higher concern for fishing in multiple sites as opposed to fishing in a single site or a few sites. Thus the SSLMC revoted to rank as higher impact a proposal that might affect a higher percentage of sites in a region, and lower impact a proposal that might affect a lower percentage of sites in a region.

Proximity of Fishing to SSL Sites

This element relates to how a fishery might affect food sources that occur near SSL sites. The SSLMC discussed how this could also relate to disturbance of SSLs, but this is not the meaning for this element. Proximity is more related to fisheries effects on prey rather than disturbance. The SSLMC has previously considered anthropogenic effects on SSLs, but determined that these impacts are very minimal and are addressed in the annual List of Fisheries process under the MMPA and disturbance is not an element that can be regulated. The five categories under proximity are the zones identified in the 2001 BiOp and its 2003 Supplement. These zones also relate to available telemetry data and the relative importance of distance from sites based on SSL occurrence. The SSLMC noted a lower score (on a data sheet provided several meetings ago) was placed by NMML on areas outside CH, and Lowell Fritz acknowledged that, based on telemetry data, there is not a lot of difference in usage by SSLs between CH outside 20 n mi and non-CH outside 20 n mi, but these data are based on juvenile animals (telemetry). Mr. Fritz acknowledged that the foraging areas outside CH may have been undervalued to some extent; Mr. Fritz indicated he would increase the importance of foraging area from what was previously provided. The SSLMC revisited the scoring of this element; three members changed their rankings on the 20+ n mi CH and 20+ n mi non-CH elements.

Site type

The SSLMC revisited the definitions of the six categories, noting these are based on numbers of SSLs using a site, by season, as well as differences in type of use such as breeding activity or maternal attendance. In general, zones closest to sites are scored higher, particularly the 0-3 and 3-10 n mi zones. The SSLMC discussed at length the

potential difference in concern over summer versus winter, considering particularly SSC comment #10. For summer haulouts, animals may range further and there may be more equality between zones because of distance of use. NMML scientists would not devalue summer haulouts because they are used by juveniles and females; some SSL biologists believe that comparing usage of sites in summer with winter is very difficult. Winter haulouts have females with young pups and also pregnant females. The SSLMC discussed possibly increasing the value of winter haulouts. Dr. Ken Pitcher suggested that summer haulouts should be of lower value in the PRT. Mr. Fritz, however, felt that all SSL sites are relatively equally important, although he acknowledged that perhaps, as Dr. Pitcher suggested, a third season, spring (April and May), might help differentiate what is likely a more sensitive season compared with the rest of summer. Earl Krygier noted that winter haulouts and rookeries are being used more because females are attending their young throughout the winter months so these sites may be more important than summer haulouts.

The SSLMC has previously had the mindset that distance away from a site may be ranked different in sensitivity to fishing if it is an activity that occurs in winter versus summer and if it is an activity that occurs at a haulout versus a rookery. There is a synergism between season and site type that is recognized in the structure of the PRT. For example, activity in 10 – 20 n mi at a summer rookery may be of less concern because female foraging is more restricted to 0 – 3 or 3 – 10 n mi because these nursing females do not tend to forage further away from dependent pups; an activity in 10 – 20 n mi, however, at a winter rookery could be of more concern because the female is not as tied to shore in winter, forages further to acquire food, and thus could be more affected further away from shore.

The SSLMC asked: are we moving back to the hypothesis that winter may be more important? In general, summer is important for juveniles, and winter is important for reproductive females. It is difficult to choose an importance level for season. If the natality study is accurate, then winter and spring are more important for late term pregnant females. Dr. Pitcher's concern is the need to protect reproductive females.

The SSLMC discussed SSL concern #10 further. Some believe the SSC was asking for a rationale for seasonal weightings rather than recommending changing the model structure by adding a season. The main question seems to be: is it more important to restrict fishing around one kind of site versus another kind of site? This is the question that was used for the previous committee voting on proximity for season and site. A winter rookery and a winter haulout are the same thing biologically and should be ranked the same. The site type summer rookery was ranked the most important.

The SSLMC attained no consensus resolution to differing opinions on seasonal importance. The Committee felt that adding a third season might be a good idea but it likely would not appreciably change the results of scoring proposals. The SSLMC does not have sufficient data to judge which season is more important. The SSLMC also noted that the structurally adjusted weightings between summer and winter haulouts are greater than the numbers on the spreadsheet. The SSLMC also discussed whether the

trade offs between the amount of work needed to change the entire structure of the model, given the relatively small increment of expected performance of the model, would merit taking that action. In general, the Committee thought that the substantive amount of work to add a third season would not improve the model performance all that much. Thus, based on these discussions, the SSLMC decided to leave the seasonal portion of the model as is.

Detailed PRT Review
Effects on SSL Diet Composition

Target species

This element addresses how important pollock, cod, or Atka mackerel are in the diet of SSLs, relative to other elements in their diet. The model is structured to acknowledge the synergism among season, region, and prey species. The SSLMC previously scored the importance of the three main target species by answering this question (this is an example specific to pollock in the eastern GOA): how important is pollock in the diet of SSLs in the eGOA in summer relative to all elements in its diet in that region and season, based on available diet data and recognizing the limitations of the scat sampling in accurately characterizing the SSL diet; this also recognizes the limitations of the frequency of occurrence metric as accurately characterizing the number and size of prey items in the scat samples.

The SSLMC revisited their rationale for scoring this question. The issue of including species other than the three target species received considerable discussion. Most felt that excluding recognition that SSLs prey on other items than the three target species is greatly misleading and a measure of the importance of other diet items should be accommodated in the PRT. Scat data used in the SSLMC's evaluation of target species, and other species, are summarized in Table 3.21 (included in the PRT report and being used in the ongoing consultation). The SSLMC also based their discussions and scoring on the diet presentations from scientists during past SSLMC meetings.

The target species category recognizes the current fisheries regulated for SSL protection; these are the species identified to be of concern in the 2001 BiOp. The SSLMC has some concerns over how to interpret the data contained in Table 3.21. Do these data reflect SSL preferences, and thus selection, or just the availability of prey? To what extent are SSLs opportunistic in dietary selection? Do these data accurately characterize the importance of items in scat to SSL nutrition? Size of prey items is an issue; sand lance are very small fish and a SSL must consume many to attain the equivalent of a single cod or pollock or greenling or salmon. Frequency of occurrence measures how often an item occurs in a sample; to what degree is this accurately indicative of prey availability or prey selection? And some species important to SSLs may not have hard bony parts that occur in scat.

The SSLMC struggled with alternative ways to measure the importance of the three target species relative to the whole SSL diet. Scat data may be the best proxy available

for identification of SSL diet. The SSC comment #6 is also an issue the SSLMC discussed at length. Harvest rate could indicate abundant fish for SSLs after fishing ceases, or it could also mean lower abundance because of high fishery removals. The SSLMC did not resolve this apparent contradiction. Spreading out the harvest is an approach to addressing part of this issue.

The SSLMC agreed to add another category to the target species element: "other". This would give the Committee four choices when voting on the importance of various elements in the SSL diet. This also would provide a "modifier" to the scores for pollock, cod, and Atka mackerel based on the level of importance of other species, relative to these three, in the SSL diet, by region and by season. Some SSLMC members argued that, because of the way the model works such that it sums to 1.0 the scores for all four categories, the "other" category would reduce the value of the other big three species when some think that the big three are not as important as other species in the diet. Committee members indicated this is a desirable result of adding the "other" category. Therefore, the SSLMC changed the structure of the model to accommodate an "other" cell for each of the areas in each of the seasons.

The Committee discussed whether to vote on the (now) four categories, or perhaps just use the data in Table 3.21 in the model by calculating proportions of each diet element. The SSLMC argued against this idea and felt that committee members should be able to vote their interpretations of the Table 3.21 data; this feature in the PRT process is why the AHP procedure is being used by the SSLMC – to seek expert opinion from a group of knowledgeable individuals.

Also, the committee felt that this is not a straight math equation based on just frequency of occurrence in scat. Members will use their judgment to determine how to score. The Committee acknowledged that voting on three species and "other" reduces the importance of the three species scores. There are no scat data on the Pribilofs so the previous scoring of the importance of pollock, cod, and Atka mackerel for the Pribilofs was based on SSLMC best judgment and consideration of data for the eastern AI and knowledge of central Bering Sea fisheries. With "other" included, the SSLMC revoted this element in the PRT hierarchy and retained the previous scoring of the big three for the Pribilofs, each reduced proportionally to allow for a 20% score for "other" in this region.

Subregion

This element is part of the above discussion and each region remains the same as previously weighted. The Committee did recognize that some could argue that one region containing more SSL sites or a larger number of SSL pups or nonpups could be considered more important than another region containing fewer. The draft revised SSL Recovery Plan recommends a criterion for recovery that requires that no two adjacent SSL census regions experience a decline in abundance over a 15 year period of time (wSSL downlisting criterion). Given this statement and the rationale for it as described in the draft Recovery Plan, the SSLMC previously acknowledged that all regions (SSL

census regions) should be considered of approximately equal importance. The Committee could find no justifiable way to rank one region more "important" than another. The Pribilofs region is ranked slightly lower, principally due to the considerably fewer SSLs using this area because it is near the furthest north extension of the wSSL range.

Season

Again, season is part of the above discussion. This category and its elements remain scored the same.

Detailed PRT Review
Effects on the Prey Field

Duration

The concept of duration is related to rate of fishing. As stated in the last meeting minutes, this term is related to intensity of harvest (amount and time) and addresses localized depletion concerns. Less harvest in a longer time frame is less likely to result in localized depletion, and this would be considered a longer duration fishery. The SSLMC discussed how better to evaluate a proposal in terms of how it might lengthen or shorten a fishery, or shift fishing timing without changing length. Rate of harvest of fish may be a better metric, and the SSLMC reviewed data from the 2001 BiOp and its 2003 Supplement (Figure III-7, weekly catch of pollock) showing rate of fishing in the BSAI for pollock during the years 1996-2002. However, the SSLMC; did not feel that including a metric for rate of fishing would be any better than the current duration element. Some suggested removing duration and addressing this outside the PRT. Mr. Henderschedt noted that duration is an artifact left over from extensive discussions and debates in previous meetings for how to address a proposal that could increase the length of a fishery – just what would this mean to SSLs? In a sense, duration is a proxy for removal rate and for gear type. The SSLMC decided to leave duration as currently scored in the PRT as a qualitative ranking of effects of a proposal on a fishery's harvest removal rate. More discussion of duration is provided above in these minutes.

% TAC

This category relates to whether a proposal seeks to add quota to a status quo fishery or will result in a greater percentage of TAC being fished in a season or area than is currently fished under status quo. This element in the PRT that addresses seasonal shift in prey is discussed above in more detail. The SSLMC decided not to change this element or scoring.

Season

This category was discussed previously as well (above). It relates to whether a proposal would result in shifting harvest within a season or from one season to another.

The three elements above are considered together in the PRT. The SSLMC previously ranked each element based on the question (using an example of a proposal that would shift harvest from winter to summer and affect the duration of the fishery): if a lot of TAC (> 10%) is shifted from winter to the summer, and the fishery results in a duration that is shorter than it currently is, then how large an effect would this be on the prey field?

The SSLMC did not change scores or debate these elements further.

Completion of the PRT

The SSLMC discussed remaining tasks to be accomplished before the PRT is ready for another SSC review. These include:

- Review the model as reconfigured and rescored and concur with scorings of all elements (reality check)
- Review the written rationale and justification of the PRT prepared by staff for accuracy and completeness
- Run tests with and without the Structural Adjust calculation of a proposal score and discuss
- Run sensitivity tests to view proposal scores from changes in ratings of various elements
- Rerun the proposals tested in the previous version of the PRT (GOA proposals for Puale Bay and Marmot Island) and discuss differences in output
- Describe process for how a proposal will be entered into the model
- Discuss how to address status quo
- Review and approve minutes of this SSLMC meeting
- Review and approve report on PRT as revised based on this SSLMC meeting

Chairman Cotter has appointed two committees to complete additional tasks. One committee will develop a process for how proposals will be input to the PRT. This group includes Sue Hills, Dan Hennen, and Doug DeMaster. Another committee will work on the process for evaluating proposals including the PRT, particularly how to apply "status quo" to the model; this committee also will compile the other kinds of data and information that would be considered "outside the model"; this group includes Dan Hennen and John Henderschedt. Another committee appointed at the last meeting is preparing data that show the dates of actual fishing periods based on recent fishery performance and relate those to the regulatory periods; this group includes Julie Bonney and John Henderschedt. Kristin Mabry and Bill Wilson will staff these committees as appropriate.

Next SSLMC Meeting and Adjourn

The SSLMC felt it needed time to address the above issues and agreed to schedule another meeting for January 8 and 9 in Anchorage. After this work is completed, the

SSLMC felt it could be presented to the SSC for a final review. Mr. Wilson will likely give the SSC an update on the PRT at the December Council meeting.

The SSLMC also noted that when the draft BiOp is completed, the Committee will require considerable time to review this document and to discuss conclusions reached and the rationale for those conclusions. This meeting will occur at the AFSC so the Committee has access to data and the scientists who have conducted much of the SSL research.

The meeting adjourned at 3:30 pm.

DRAFT

North Pacific Fishery Management Council
Steller Sea Lion Mitigation Committee Meeting
Alaska Fisheries Science Center
October 30, 31, November 1, 2006

Purpose: Refine and finalize Proposal Ranking Tool (PRT). Review and incorporate SSC comments on PRT, as appropriate.

AGENDA (as amended)

October 30 - 8:30 AM – 5:00 PM

1. Introductions and Opening Remarks, Announcements, Agenda Approval (Cotter)
2. Minutes of Last Meeting (Wilson)
3. Update on Council Meeting in Dutch Harbor (Wilson, Cotter)
4. Review and Discuss Board of Fisheries Actions on October 14-15 (Cotter, Wilson)
5. Update on Consultation and BiOp (Wilson, Cotter)
6. Killer Whale Predation Update (DeMaster)
7. Review SSC Comments on Proposal Ranking Tool (PRT) (Wilson)
8. Experimental Design Committee Report (Gauvin)
9. Discuss and Revise PRT per SSC Comments, As Appropriate

October 31 – 8:30 AM – 5:00 PM

10. Continue Work on PRT

November 1 – 8:30 AM – 5:00 PM

11. Conduct Sensitivity Tests of PRT
12. Develop Text for Referencing PRT Hierarchy and Prepare PRT Report for SSC
13. Discuss Committee Meeting Schedule
14. Action Items, Closing Remarks, Adjourn (Cotter)

Public comment periods will be provided during the meeting.

Contact Bill Wilson at the Council offices if you have questions: 907-271-2809 or bill.wilson@noaa.gov

To Steller Sea Lion, Northern Fur Seal Researchers and Colleagues

This message is to provide to you with an update of where we are on completing an Environmental Impact Statement (EIS) on the effects of research activities on Steller sea lions and northern fur seals in anticipation of issuing new research permits in FY07, and to begin addressing questions you might have regarding what you have to do to obtain a new permit to conduct research this season and when that research might begin. I have broken this down into a brief background followed by the most frequently asked questions that we have received since last spring when research was suspended.

Background: In May 2005, the National Marine Fisheries Service (NMFS) issued six scientific research permits authorizing research on Steller sea lions. The permits were issued under both the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA), and authorized a wide range of research activities. Prior to issuing these permits, NMFS prepared an environmental assessment (EA) under the National Environmental Policy Act (NEPA) and concluded that no significant harm to the environment would result from the activities to be authorized by the permits. On that basis NMFS determined that an EIS was not required under NEPA. In July 2005, the Humane Society of the United States (HSUS) challenged the validity of the permits, alleging among other things that by failing to prepare an EIS before issuing the permits, NMFS had violated NEPA.

On May 26, 2006, the District Court in Washington D.C. ruled that NMFS should have prepared an EIS under NEPA before issuing the permits in 2005. The judge held that the analysis contained in the EA did not support the finding of no significant harm to the environment. The judge vacated the six permits issued under the EA, and remanded the matter to the agency for completion of an EIS.

Q1: If the permits were vacated how did NMFS authorize last summer's research?

A: The court vacated the permits, and then, after several weeks of negotiation between NMFS, Department of Justice, and HSUS, the Court "re-validated" the permits in a June 30th order, but **ONLY** for the limited purpose of conducting activities specifically delineated in the settlement agreement. These activities were spelled out in the June 30th order and included 'hands-off' activities such as aerial and shipboard surveys, and monitoring from a distance. In other words, only certain activities under the permits were allowed. Any activities not spelled out in the order were (and remain) invalidated by the court.

Q2: Can the activities that were allowed last summer go forward again this summer (2007) without further negotiation?

A: The June 2006 Court order does not limit the 're-validated" activities to 2006, and in fact, specifically mentions that some of the activities will occur in 2007. For example, for Permit No. 782-1768 (NMML), the order states that "These surveys (from boats) will occur . . . August 1-31, 2007" and "This survey (from planes) will occur . . . March 2007." Other such 2007 activities are mentioned throughout. In other cases, no dates are specified, but the activity is of an ongoing

nature (e.g., monitoring, operation of remote cameras). Therefore, activities allowed in 2006 may continue into 2007.

Q3: Do researchers have to resubmit their application "for everything or just the parts that were vacated?"

A: It depends. Following the logic explained in the response to Q2, researchers do not have to resubmit applications to continue the activities allowed in 2006. Therefore, if your research is limited to what you did in 2006, and you are content with that level of activity, you do not have to apply for a new permit.

However, for those of you conducting research on Steller sea lions under permits affected by the May 2006 Court ruling who wish to "reinstate" the activities vacated by the Court, or your permit was not affected by the Court order but you want to make changes or additions to your permit, you need to submit an application for those activities. If you fall into one of these categories and need to resubmit an application for any part of your research, or if your current permit was not affected by the Court ruling but will expire in the next 12-18 months, we are recommending that each researcher resubmit their entire application in 2007 for several very good administrative reasons that affect both of us.

First, if you do not request a new permit for the research activities the court let go forward in 2006, these activities will likely expire in the next year or two (this varies with each permit). The activities that were vacated, and for which you need reapply, would be permitted in 2007 at the earliest, and set to expire in five years. Therefore you would end up working under two research permits with two different expiration dates depending upon the activity. This would double your permitting workload and ours, a trend we are clearly trying to reverse. Second, NMFS cannot issue permits for any research activities until NMFS completes the Court mandated EIS under NEPA. All of the research activities being conducted 2007-2012, vacated or not, need be evaluated in the EIS. Submitting a complete application for all research activities that you want to conduct in the next five years will ensure that they are covered in this NEPA document. Therefore if your research activities were being conducted under one of the six permits that were vacated by the May 2005 Court Order, we are asking you to resubmit your entire application.

Q4: What will be the process for submitting a Permit Application for FY07?

A: The primary purpose of this email message is to advise you to begin preparing your application for a permit to conduct research on these species now, and submit your application by December 1, 2006. The timing of this application is extremely important for several reasons. We want to conduct the required public comment period on the research applications during the same time period that we conduct the public comment period on the Draft EIS. Right now we are hoping to initiate the public comment period on the DEIS early to mid January. By receiving your application by December 1, it will allow you (the applicant) and Protected Resources one month to ensure that all applications are complete and ready for public review. We will then conduct the two comment periods together. This will help us ensure that all research activities

that are being proposed are addressed in the DEIS. Applications received after December 1, and applications that are incomplete, will result in delays in issuance of permits.

Q5: What is the timeline for the EIS process and when can we expect to get in the field this year?

A: First we are working with our contractor to complete the DEIS, including the analysis of effects for each alternative (including a preferred alternative) as quickly as possible without compromising the review. The principal complaint by the Court in 2006 was the inadequate analytical review under NEPA. If we can keep on current schedule, we have a target date of mid-June to have a signed Record of Decision (ROD) (this generally occurs 30 days after a Final EIS has been completed). The FEIS and ROD will then be provided to the Court. Barring another challenge, work can likely begin shortly after that date. However, we cannot guarantee a permit or an approval to get in the field by a specific date at this time.

General Instructions for Submitting and Expediting the Permit Application: Application instructions are included here and can also be downloaded from our website http://www.nmfs.noaa.gov/pr/permits/mmpa_permits.htm#enhancement. Please note that these instructions have changed since you last applied for a Steller sea lion or northern fur seal permit. To avoid delays in processing your application, please follow these new instructions carefully and provide complete responses to all questions.

One of the most common errors (for several reasons) in submitting an application is providing inadequate or insufficient information about the proposed "takes" for the research activities. "Takes" for each research activity need to be identified not only by species but by stock, specific geographic location, time of year, sex, and age class. For Steller sea lions, there are two Distinct Population Segments (DPS) and you must specify "takes" by DPS, rather than requesting them "range-wide" or "Alaska-wide."

Specific information about when, where, and what group of animals the research would affect is critical to NMFS' environmental analyses under NEPA, and, for Steller sea lions, under the ESA. Remember your permit application will be reviewed not only for compliance with MMPA issuance criteria, but NMFS decision to issue your permit will be subject to legal review under NEPA and the ESA as well. Note that we cannot process applications requesting takes of Steller sea lions only as "range-wide" or "Alaska-wide."

Please, to the best of your knowledge, provide complete and detailed responses to all questions in the application instructions. Incomplete information will result in delays in processing your application. Any delays in completing the permit application by December 1 will likely compromise your ability to get in the field this season.

If you have questions about submitting your application or about the EIS, please contact Tammy Adams at 301-713-2289 or by email at Tammy.Adams@noaa.gov.

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

November 21, 2006

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Stephanie,

We would like to update the North Pacific Fishery Management Council (Council) on the status of the Fishery Management Plan level biological opinion (BiOp) for the Alaska groundfish fisheries. At your request, we provided the Council a partial draft BiOp prior to its October 2006 meeting. The complete draft of this new BiOp will examine and synthesize over five years and $100M of new information on both published and unpublished literature. While the agency had originally intended for a complete draft to be available by December 2006, the scale of this effort, as well as limited staff resources, has caused us to re-evaluate that timeline. The agency now expects that a complete draft BiOp will be available to the Council by June 1, 2007. We also intend to schedule an independent peer review of the draft BiOp between June and October 2007.

The June 1 schedule for the draft BiOp would allow the Steller Sea Lion Mitigation Committee to review the document and develop any revisions to existing protection measures before the October 2007 Council meeting. In October, the Council could consider the peer review results, as well as SSC, AP, and public comments on the draft BiOp during Council consideration of proposed changes to the Steller sea lion protection measures. A preliminary preferred alternative for changes could be selected in December 2007, which then could be identified in the draft environmental analysis and considered in the final BiOp during early 2008. Final Council action on any changes to the Steller sea lion protection measures may be possible by April 2008, depending on the nature of the environmental analysis and any revisions to the draft BiOp that would be required. Implementation of any changes likely would occur in early 2009.

We acknowledge that the Council has expressed interest in our finalization of the Recovery Plan prior to completion of the BiOp. However, given our limited resources, we intend to first finalize the BiOp and then proceed to finalize the draft Recovery Plan.

We recognize the dedication and cooperation of the Council in maintaining priority attention to new information concerning the status of Steller sea lions. We also recognize that the schedule for completing the BiOp has been delayed several times over the past year. Nonetheless, we believe that the June 1 delivery date for the draft BiOp is necessary given the scope of the project and time required for internal agency review of the draft document. We appreciate your ongoing support during this consultation process.

Sincerely,

Robert D. Mecum

Robert D. Mecum
Acting Administrator, Alaska Region

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2006–0925; FRL–8250–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the state of Missouri. This revision pertains to Grossman Iron and Steel's Source Registration Permit, number SR00.045A. This permit, issued by the City of St. Louis, will control particulate matter (PM_{10}) emissions from Grossman Iron and Steel Company. This proposed approval will make the permit Federally enforceable.

DATES: Comments on this proposed action must be received in writing by January 3, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0925 by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.
2. *E-mail: algoe-eakin.amy@epa.gov.*
3. *Mail:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier:* Deliver your comments to: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: November 24, 2006.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E6–20432 Filed 12–1–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 061106290–6290–01, I.D. 101706C]

RIN 0648–AV01

List of Fisheries for 2007

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

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) is publishing its proposed List of Fisheries (LOF) for 2007, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2007 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: Comments must be received by January 3, 2007.

ADDRESSES: Send comments to Chief, Marine Mammal Conservation Division, Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via email to *2007LOF.comments@noaa.gov* or to the Federal eRulemaking portal: *http://www.regulations.gov* (follow instructions for submitting comments).

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

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

FOR FURTHER INFORMATION CONTACT: Melissa Andersen, Office of Protected Resources, 301–713–2322; David Gouveia, Northeast Region, 978–281–9328; Laura Engleby, Southeast Region, 727–824–5312; Elizabeth Petras, Southwest Region, 562–980–3238; Brent Norberg, Northwest Region, 206–526–6733; Bridget Mansfield, Alaska Region, 907–586–7642; Alecia Van Atta, Pacific Islands Region, 808–973–2937. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

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

Regional Offices

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Marcia Hobbs;

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

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

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

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

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI, 96814–4700.

What is the List of Fisheries?

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

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

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

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

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

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

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

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the 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 Does NMFS Determine which Species or Stocks are Included as Incidentally Killed or Seriously Injured in a Fishery?

The LOF includes a list of marine mammal species or stocks incidentally killed or seriously injured in each commercial fishery, based on the level of serious injury or mortality in each fishery relative to the PBR level for each stock. To determine which species or stocks are included as incidentally killed or seriously injured in a fishery, NMFS annually reviews the information presented in the current marine mammal Stock Assessment Reports (SARs). The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of mortality or serious injury incidental to commercial fishing operations. NMFS also reviews other sources of new information, including observer data, stranding data and fisher self-reports.

In the absence of reliable information on the level of mortality or serious injury of a marine mammal stock, or insufficient observer data, NMFS will determine whether a species or stock should be added to, or deleted from, the list by considering other factors such as: changes in gear types used, increases or decreases in fishing effort, increases or decreases in the level of observer coverage, and/or changes in fishery management that are expected to lead to decreases in interactions with a given marine mammal stock (such as a Fishery Management Plan [FMP] or a Take Reduction Plan [TRP]). NMFS will provide case specific justification in the LOF for changes to the list of species or stocks incidentally killed or seriously injured.

How do I Determine the Level of Observer Coverage in a Fishery?

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

mortality and serious injury of marine mammals. Information presented in the SARs' appendices include: level of observer coverage, target species, levels of fishing effort, spatial and temporal distribution of fishing effort, gear characteristics, management and regulations, and protected species interactions.

NMFS refers readers to the SARs for the most current information on the level of observer coverage for each fishery. Copies of the SARs are available on the NMFS Office of Protected Resource's Web site at: *http://www.nmfs.noaa.gov/pr/sars/*. Additional information on observer coverage in commercial fisheries can be found on the National Observer Program's website: *http://www.st.nmfs.gov/st4/nop/*.

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

This proposed rule includes 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?

Vessel or gear owners 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 an authorization certificate. The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)).

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. 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. The following section indicates which fisheries are integrated fisheries and has a summary of the integration process for each Region. Vessel or gear owners who operate in an integrated fishery and have not received an authorization certificate by January 1 of each new year or with renewed state fishing licenses (as in Washington and Oregon) must contact their NMFS Regional Office (see **ADDRESSES**). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries. Individuals fishing in Category I and II fisheries for which no state or Federal permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

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;
4. All Southeast Regional fisheries for which a Federal permit is required, as well as fisheries permitted by the states of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas; and
5. The Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set line Fishery.

How Do I Renew My Registration Under the MMPA?

Vessel or gear owners that participate in fisheries that have integrated registration programs (described above) are automatically renewed and should receive an authorization certificate by January 1 of each new year, with the exception of Washington and Oregon Category II fisheries. Washington and Oregon fishers receive authorization with each renewed state fishing license, the timing of which varies based on target species. Vessel or gear owners who participate in an integrated fishery and have not received authorization certificates by January 1 or with renewed fishing licenses (Washington and Oregon) must contact the appropriate NMFS Regional Office (see **ADDRESSES**). Vessel or gear owners that participate in fisheries that do not have integrated registration programs and that have previously registered in a Category I or II fishery will receive a renewal packet from the appropriate NMFS Regional Office at least 30 days prior to January 1 of each new year. It is the responsibility of the vessel or gear owner in these fisheries to complete their renewal form and return it to the appropriate NMFS Regional Office 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 must 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 gear owner or operator (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. Injury/mortality report forms and instructions for submitting forms to NMFS can be downloaded from: *http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf*. Reporting requirements and procedures can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

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

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

Fishers participating in a Category I or II fishery are required to comply with

any applicable take reduction plans. Take reduction plan requirements can be found at 50 CFR 229.30–34.

Sources of Information Reviewed for the Proposed 2007 LOF

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

NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that may not be included in the SARs.

The LOF for 2007 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), the final SARs for 2005 (71 FR 26340, May 4, 2006), and the draft SARs for 2006 (71 FR 42815, July 28. 2006). All SARs are available at: *http://www.nmfs.noaa.gov/pr/sars/*.

Summary of Changes to the LOF for 2007

The following summarizes changes to the LOF in 2007 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 placement and definition of U.S. commercial fisheries for 2007 are identical to those provided in the LOF for 2006 with the following exceptions.

Commercial Fisheries in the Pacific Ocean

Fishery Classification

AK Cook Inlet Salmon Set Gillnet Fishery

NMFS proposes to elevate the "AK Cook Inlet salmon set gillnet fishery" from Category III to Category II based on a documented serious injury/mortality of a Central North Pacific (CNP) humpback whale from entanglement in 2005. From 2001–2005, 17 documented serious injuries and mortalities of CNP humpback whales were directly attributable to commercial U.S. fisheries under state or Federal management. Therefore, annual average serious injury and mortality of this stock is 3.4 animals per year for the same period, or 26.36 percent of the PBR (PBR = 12.9). The single serious injury/mortality in the AK Cook Inlet salmon set gillnet fishery translates to an annual average mortality and serious injury of 0.2 animals per year, or 1.55 percent of the stock's PBR (PBR= 12.9). Category II classification is necessary based on the mean serious injury and mortality of humpback whale (CNP) exceeding 1 percent of its PBR. Consequently, NMFS proposes to elevate the AK Cook Inlet salmon set gillnet fishery to Category II.

Addition of Fisheries to the LOF

WA, OR Sardine Purse Seine Fishery

NMFS proposes to add the "WA, OR sardine purse seine fishery" as a Category III fishery. This fishery has 42 participants. The 2006 LOF contains the California portion of the fishery in the Category II "CA sardine purse seine fishery" (proposed to be merged with the anchovy and mackerel portion of the "CA anchovy, mackerel, tuna purse seine fishery" to create the "CA anchovy, mackerel, sardine purse seine fishery" on the 2007 LOF). The Washington and Oregon portion of the sardine purse seine fishery should be listed separately because incidental taking of marine mammals in the this fishery has not been documented. Initially the coastwide sardine harvest guideline, distributed across the entire west coast Exclusive Economic Zone (EEZ), had separate allocations between the Federally managed limited entry fishery off California and the state regulated fisheries off Oregon and Washington. Observations made under the divided allocation indicated that the California portion of the fishery warranted listing as a Category II fishery, owing to rare incidental taking of California sea lions and by analogy with other Category II purse seine fisheries. However, no incidental take of marine mammals was observed in the northern portion of the fishery off Oregon and Washington. Harvest allocations for the two areas were combined in 2005, however fishing effort in the northern state-managed fishery is expected to remain limited in timing and area and the fishery should be listed separately to reflect that no incidental take has been documented.

Oregon and Washington issued 26 and 16 permits, respectively, for the fishery in 2004 and the fishery is managed as a limited entry fishery. Observer coverage in the sardine purse seine fishery in the Pacific Northwest, ranging from 4 to 27 percent between 2000–2004, documented no incidental take of marine mammals off Oregon and Washington. The absence of observed serious injuries or mortalities indicates there is a remote likelihood of serious injuries or mortalities in this fishery. Therefore, NMFS proposes to add this fishery to the LOF in Category III.

CA Halibut Bottom Trawl Fishery

NMFS proposes to add the "CA halibut bottom trawl fishery" as a Category III fishery. There has not been a Federal observer program initiated for this fishery and there are no documented marine mammal serious injury or mortalities incidental to this fishery.

The "CA halibut bottom trawl fishery" is currently an open-access fishery operating primarily outside state waters. This fishery is not part of the Federal Groundfish Fishery Management Plan (FMP), or any other FMP, and is therefore managed by the California Department of Fish and Game (CDFG) in both state and Federal waters. There is limited fishing allowed between one and three miles offshore within the halibut fishing grounds between Point Arguello and Point Mugu, California. In 2006, the CDFG implemented a permit program for this fishery. Approximately 125 vessels meet the minimum criteria established by CDFG for permit but only 53 permits have been issued.

CA Tuna Purse Seine Fishery

See discussion below under "CA purse seine fisheries".

AK Cook Inlet Salmon Purse Seine Fishery

NMFS proposes to add the "AK Cook Inlet salmon purse seine fishery" as a Category II based on a documented mortality of a Central North Pacific (CNP) humpback whale in this fishery. The LOF has never included this fishery, although it has existed under state management for many years. This

fishery has 82 participants. This oversight is likely the result of an incomplete inclusion in the LOF of AK state-managed fisheries, as well as a lack of documented serious injuries or moralities in this fishery. NMFS assumes that this humpback whale belongs to the CNP stock based on the known distribution of the this stock, and because there is no known overlap of this fishery with the Western Central North Pacific stock of humpback whales.

From 2001–2005, 17 documented serious injuries and mortalities of CNP humpback whales were directly attributable to commercial U.S. fisheries under state or Federal management. Therefore, annual average serious injury and mortality of this stock is 3.4 animals per year for the same time period, or 26.36 percent of the PBR (PBR = 12.9). The single mortality in the AK Cook Inlet salmon purse seine fishery translates to an annual average mortality and serious injury of 0.2 animals per year, or 1.55 percent of the stock's PBR. Category II classification is necessary based on the mean serious injury and mortality of CNP humpback whales exceeding 1 percent of PBR. Consequently, NMFS proposes to add the AK Cook Inlet salmon purse seine fishery to the LOF as a Category II.

AK Kodiak Salmon Purse Seine Fishery

NMFS proposes to add the "AK Kodiak salmon purse seine fishery" as a Category II based on a documented mortality of a CNP humpback whale in this fishery. The LOF has never included this fishery, although it has existed under state management for many years. This fishery has 370 participants. This oversight is likely the result of an incomplete inclusion in the LOF of AK state-managed fisheries, as well as a lack of documented serious injuries or moralities in this fishery. NMFS assumes that this humpback whale belongs to the CNP stock based on the known distribution of the this stock, and because there is no known overlap of this fishery with the Western Central North Pacific stock of humpback whales.

From 2001–2005, 17 documented serious injuries and mortalities of CNP humpback whales were directly attributable to commercial U.S. fisheries under state or Federal management. Therefore, annual average serious injury and mortality of this stock is 3.4 animals per year for the same time period, or 26.36 percent of the PBR (PBR = 12.9). The single mortality in the AK Kodiak salmon purse seine fishery translates to an annual average mortality and serious injury of 0.2 animals per year, or 1.55 percent of the stock's PBR (PBR = 12.9). Category II classification is necessary based on the mean serious injury and mortality of CNP humpback whales exceeding 1 percent of PBR. Consequently, NMFS proposes to add the AK Kodiak salmon purse seine fishery to the LOF as a Category II.

Removal of Fisheries from the LOF

CA Sardine Purse Seine Fishery

See discussion for "CA purse seine fisheries" under Fishery Name and Organizational Changes and Clarifications.

CA Herring Purse Seine Fishery

NMFS proposes to remove the "CA herring purse seine fishery". This fishery was phased out by CDFG for biological and economic reasons. The fishery was eliminated in 1998.

Fishery Name and Organizational Changes and Clarifications

NMFS proposes to modify the definition of superscript [1] in "Table 1- List of Fisheries Commercial Fisheries in the Pacific Ocean" from "...1 fishery classified based on serious injuries and mortalities of this stock are greater than 1 percent, but less than 50 percent of the stock's PBR" to read "...[1] fishery classified based on serious injuries and mortalities of this stock are greater than 1 percent of the stock's PBR." The current definition only defines a stock influencing the elevation of a fishery to Category II, and not to Category I, where annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the stock's PBR (August 30, 1995; 60 FR 45088). Modifying the definition by deleting "...but less than 50 percent" allows marine mammal stocks responsible for all Category I and II fishery classifications to be evident.

Hawaii Inshore Gillnet Fishery

NMFS proposes to modify the name of the "Hawaii gillnet fishery" to the "Hawaii inshore gillnet fishery" to reflect the location of effort in this fishery.

Hawaii Inshore Purse Seine Fishery

NMFS proposes to modify the name of the "Hawaii purse seine fishery" to the "Hawaii inshore purse seine fishery" to reflect the location of effort in this fishery.

CA Yellowtail, Barracuda, and White Seabass Drift Gillnet (mesh size >3.5 inches and <14 inches) Fishery

NMFS proposes to modify the name of the "CA yellowtail, barracuda, white seabass, and tuna drift gillnet (mesh size >3.5 inches and <14 inches) fishery" to delete "tuna" from the title. Thus, the name should be "CA yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 inches and <14 inches) fishery". Targeting tuna with this type of drift gillnet was effectively prohibited with the adoption of the Highly Migratory Species (HMS) FMP in April, 2004. The HMS FMP allows vessels with drift gillnet of less than 14 inches to land no more than 10 HMS species (including tuna and excluding swordfish) per trip.

CA Purse Seine Fisheries

NMFS proposes to reorganize the "CA anchovy, mackerel, tuna purse seine fishery" and the "CA sardine purse seine fishery" by moving the tuna portion into a separate fishery and combining the sardine, anchovy, and mackerel portions into one fishery. The end result is to create the "CA anchovy, mackerel, sardine purse seine fishery" and the "CA tuna purse seine fishery".

The purse seine gear used, fishing methods and areas fished to target anchovy, mackerel, and sardine are similar, and all three fish species may be taken by vessels in this fishery. Harvest of anchovy, mackerel, and sardine is managed jointly by the state of California and NMFS under the Coastal Pelagic Species (CPS) FMP. The current fleet in the CA anchovy, mackerel, sardine purse seine fishery is approximately 100 vessels, with 61 permits issued to fish sardine.

The gear used and areas fished for tuna are different than for the other three species. Harvest of tuna is managed under the Highly Migratory Species FMP. Approximately 10 vessels made tuna landings using this gear in 2005. There are no documented marine mammal mortality or serious injuries in this fishery; however, NMFS proposes to retain the CA tuna purse seine fishery as Category II by analogy with other CA purse seine fisheries.

The Category II "CA squid purse seine fishery" will remain as currently listed. Although this fishery, like other fisheries targeting coastal pelagic species, is jointly managed by the state of California and NMFS under the CPS FMP, the methods used to target squid differ from those used to target other coastal pelagic species (i.e., gear is set at night with the aid of lights).

Number of Vessels/Persons

NMFS proposes to update the estimated number of participants in the "Commonwealth of Northern Mariana Islands tuna troll fishery" from 50 to 88.

NMFS proposes to update the estimated number of participants in the

"Guam tuna troll fishery" from 50 to 401.

NMFS proposes to update the estimated number of participants in the "American Samoa longline fishery" from 138 to 60.

NMFS proposes to update the estimated number of participants in the "Guam bottomfish fishery" from <50 to 200.

NMFS proposes to update the estimated number of participants in the "HI Main Hawaiian Islands, Northwestern Hawaiian Islands deep sea bottomfish fishery" from 387 to 300. The waters surrounding the Northwestern Hawaiian Islands (NWHI), out to a distance of approximately 50 nmi from the islands, have been designated as part of the NWHI Marine National Monument by Proclamation 8031 (June 15, 2006). Proclamation 8031 limits the number of bottomfish fishery participants in the Monument to 8 commercial fishermen permitted at the time of designation to fish for certain species within particular zones in the Monument. Commercial fishing in the Monument may continue until June 15, 2011.

List of Species That are Incidentally Injured or Killed

CA/OR Swordfish/Thresher Shark Drift Gillnet Fishery

NMFS proposes to remove the following marine mammals from the list of marine mammal species and stocks incidentally killed or seriously injured in the CA/OR swordfish/thresher shark drift gillnet fishery: Baird's beaked whale (CA/OR/WA stock), bottlenose dolphin (CA/OR/WA offshore stock), Cuvier's beaked whale (CA/OR/WA stock), killer whale (Eastern North Pacific offshore stock), Mesoplodont beaked whale (CA/OR/WA stock), northern fur seal (San Miguel Island stock), pygmy sperm whale (CA/OR/WA stock), Steller sea lion (Eastern U.S. stock), and striped dolphin (CA/OR/WA stock). None of these species have been observed taken in the fishery since October 30, 1997, when regulations were published implementing the Pacific Offshore Cetacean Take Reduction Plan (POCTRP). The POCTRP requires pingers (acoustic deterrent devices) be placed on drift gillnets and extenders (buoy lines) be at least 36 feet long. In addition, following notification from NMFS, vessel captains must attend skipper education workshops provided by NMFS Southwest Regional Office. Since implementation of the POCTRP, marine mammal bycatch in this fishery has declined and the species listed above have not been observed killed or seriously injured in this fishery.

NMFS also proposes to change name of the humpback whale stock from "CA/OR/WA-Mexico" to "Eastern North Pacific". The title for this stock was changed in the 2001 SAR to be consistent with stock names of other Pacific species. Due to a technical error, this change was not made to the humpback whale stock under this fishery.

CA Lobster, Prawn, Shrimp, Rock Crab, Fish Pot Fishery

NMFS proposes to add the humpback whale (Eastern North Pacific stock), gray whale (Eastern North Pacific stock), and harbor seal (CA stock) to the list of marine mammal species and stocks incidentally killed or seriously injured in the "CA lobster, prawn, shrimp, rock crab, fish pot fishery" based upon data from the NMFS Southwest Regional Office stranding and entanglement databases. Between 2000–2005, there were 14 sightings of free swimming humpback whales, gray whales, or unidentified whales entangled in fishing gear identified as pot or trap gear. Of these sightings, 11 entanglements were identified as crab pot gear and 3 were identified as other gear types (lobster and spot prawn). In addition, the stranding database has recorded one dead gray whale, one dead harbor seal, and one dead unidentified pinniped entangled or trapped in pot or fish trap gear. Currently there are insufficient data to elevate this fishery to Category II, but NMFS will continue to monitor marine mammal interactions with pot/trap gear and revisit the fishery's classification in future LOFs.

WA, OR, CA Crab Pot Fishery

NMFS proposes to add the humpback whale (Eastern North Pacific) to the list of marine mammal species and stocks incidentally killed or seriously injured in the "WA, OR, CA crab pot fishery" based upon data from the NMFS Southwest Regional Office stranding and entanglement databases. Between 2000–2005, there were 14 sightings of free swimming humpback whales, gray whales, or unidentified whales entangled in fishing gear identified as pot or trap gear. Of these sightings, 11 entanglements were identified as crab pot gear and 3 were identified as other gear types (lobster and spot prawn). In addition, the stranding database has recorded one dead gray whale, one dead harbor seal, and one dead unidentified pinniped entangled or trapped in pot or fish trap gear. Currently there are insufficient data to elevate this fishery to Category II, but NMFS will continue to monitor marine mammal interactions with pot/trap gear and revisit the fishery's classification in future LOFs.

AK Prince William Sound Salmon Drift Gillnet

Due to a typographical error in the 2006 LOF, the South Central AK stock of sea otters was inadvertently removed from the list of stocks incidentally killed or seriously injured in the "AK Prince William Sound salmon drift gillnet fishery." NMFS proposes to correct this error and place the stock back on the list of species and stocks incidentally killed or seriously injured in this fishery.

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

Fishery Classification

Mid-Atlantic Mid-Water Trawl (Including Pair Trawl) Fishery

NMFS proposes to downgrade the "mid-Atlantic mid-water trawl (including pair trawl) fishery" from Category I to Category II based on data presented in the draft 2006 SAR. This fishery was elevated to Category I on the 2001 LOF based on the estimated incidental serious injury and mortality of the western north Atlantic (WNA) stock of common dolphins exceeding 50 percent of the stock's PBR during the period from 1996–1998. Based on the most recent data presented in the draft 2006 SAR, the mean serious injury and mortality of common dolphins (WNA) in the mid-Atlantic mid-water trawl (including pair trawl) fishery was 0, or 0 percent of PBR (PBR= 1000) while the mean serious injury and mortality of white sided dolphins (WNA) was 4.3 percent of PBR (PBR= 379). As a result, NMFS has determined that a Category I classification for the mid-Atlantic mid-water trawl fishery is no longer warranted. However, a Category II classification is necessary based on the mean serious injury and mortality of white sided dolphins (WNA) exceeding 1 percent of its PBR. Consequently, NMFS proposes to downgrade the mid-Atlantic mid-water trawl (including pair trawl) fishery from Category I to Category II.

NMFS also proposes to remove the superscript (1) from common dolphins (WNA), long-finned pilot whales (WNA), and short-finned pilot whales (WNA) in Table 2. The mean mortality and serious injury levels presented in the draft 2006 LOF for common dolphins (WNA) was 0 percent of PBR, and for short-finned and long-finned pilot whales (WNA) was 0.3 percent of PBR; therefore, serious injury and mortality of common dolphins (WNA) and long-finned and short-finned pilot

whales (WNA) is no longer driving the categorization of this fishery. The serious injury and mortality of white-sided dolphins (WNA) continues to drive the classification of this fishery as a Category II.

Addition of Fisheries to the LOF

Mid-Atlantic Flynet Fishery

NMFS proposes to add the "Mid-Atlantic flynet" fishery as Category II. The flynet fishery currently operates from the Oregon Inlet to Cape Hatteras, NC between October and April, and operates in both Federal and state waters. Flynet fishing gear is characterized by high profile trawls that fish just off the bottom, targeting summer flounder, croaker, and weakfish. Flynets range from 8–12 ft (24 to 36 m) across, with wing mesh sizes of 16–64 in. (41–163 cm). Mesh size is smaller closer to the tailbag, where the mesh size is 3.5 in (9 cm) square hung. Flynet fishing is no longer permitted south of Cape Hatteras in order to protect weakfish stocks. As of 2002, there were 21 vessels utilizing flynet fishing gear. This is largely an opportunistic fishery, meaning that fishermen may have flynets on their vessels as well as other gear, and generally use them to harvest large schools of target fish. NMFS has placed observers on a voluntary basis on flynet vessels operating out of Wanchese, NC, and approximately 12 trips have been observed. Although no marine mammals have been observed incidentally seriously injured or killed, the similarity of this gear to other Category II bottom trawl fisheries warrants its classification as a Category II fishery by analogy.

Fishery Name and Organizational Changes and Clarifications

NMFS proposes to modify the definition of superscript (1)in Table 2, "List of Fisheries Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean" from "...1 fishery classified based on serious injuries and mortalities of this stock are greater than 1 percent, but less than 50 percent of the stock's PBR" to read "...1 fishery classified based on serious injuries and mortalities of this stock are greater than 1 percent of the stock's PBR." The current definition only defines a stock influencing the elevation of a fishery to Category II, and not to Category I, where annual mortality and serious injury of a stock in a given fishery are greater than or equal to 50 percent of the stock's PBR (60 FR 45088, August 30, 1995). Modifying the definition by deleting "...but less than 50 percent" allows marine mammal stocks responsible for all Category I and II fishery classifications to be evident.

Southeastern U.S. Atlantic Shark Gillnet Fishery

NMFS proposes to clarify that fishermen in the "Southeastern U.S. Atlantic shark gillnet" fishery include those using gillnets set in a sink, stab, set, strike, or drift fashion to target sharks. Traditionally, the 6 vessels considered to comprise this fishery used gillnets in either a drift or strikenet configuration. However, observers placed on various gillnet vessels in the Southeast have also documented the use of sink, stab, and set gillnets to target sharks by fishermen with a directed shark permit issued by NMFS under the FMP for Atlantic Tunas, Swordfish, and Sharks (50 CFR 635). A more accurate estimate of the number of vessels currently targeting sharks in the Southeast using gillnets is up to 30 vessels, although the fishery is dynamic with vessels configuring their gear to target a variety of other species as well.

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

NMFS proposes to clarify the target species in the "Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery" to also include fishermen using pelagic longlines to target or land dolphin and wahoo. Fishing for dolphin and wahoo using longline gear involves shortening the gangions (the lines that serve to attach the hook to the mainline) so that they fish closer to the surface. Observers have noted that fishermen generally modify only sections of the pelagic longline gear set to target dolphin or wahoo, with the rest of the gear configured to target swordfish, tuna, and/or sharks. The number of vessels that regularly modify sections of their gear to target dolphin and wahoo is unknown, and there is no record of any observed vessel modifying their gear to fish only for dolphin and wahoo. Although fishermen using longlines to catch dolphin or wahoo are required to be permitted under the NMFS FMP for the Dolphin and Wahoo Fishery of the Atlantic in order to land these species, because they are only modifying a section of the gear to target dolphin or wahoo, they must also have a permit issued by NMFS under the FMP for Atlantic Tunas, Swordfish, and Sharks (50 CFR 635) to land pelagic species caught on unmodified sections of the gear. For these reasons, fishing for dolphin or wahoo using pelagic longline gear is considered part of the "Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery".

Northeast Sink Gillnet Fishery, Northeast Anchored Float Gillnet Fishery, and Northeast Drift Gillnet Fishery

NMFS proposes to change the language defining the "Northeast sink gillnet", the "Northeast anchored float gillnet", and the "Northeast drift gillnet" fisheries by removing "...from the Maine/Canada border through the waters east of 72° 30'W..." (62 FR 33, January 2, 1997) from all three fisheries descriptions and replacing this with "...from the U.S./Canada border to Long Island, NY, at 72° 30'W. long. South to 36° 33.03'N. lat. And east to the eastern edge of the EEZ...". This wording is more consistent with proposed management area boundaries for gillnet fisheries under the Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations. As the ALWTRP management areas for gillnet fisheries consider the LOF definitions, consistency between the two boundaries may reduce confusion.

Northeast Sink Gillnet Fishery

NMFS proposes to expand the list of target species associated with the "Northeast sink gillnet fishery". Upon the classification of sturgeon as a prohibited species in state and Federal waters, NMFS removed the "Gulf of Maine, Southeast U.S. Atlantic coastal shad, sturgeon gillnet fishery" from the LOF. Gillnet fishing for shad in the Northeast was reorganized and recategorized into the "Northeast sink gillnet fishery", "Northeast anchored float gillnet fishery", and/or the "Northeast drift gillnet fishery" depending on the type of gear used (66 FR 6545, January 22, 2001). The "Offshore monkfish gillnet fishery" was also removed from the LOF in 1997 (62 FR 33, January 2, 1997) and monkfish were to be integrated into either the "Northeast sink gillnet fishery" or the "U.S. mid-Atlantic coastal gillnet fishery" depending on where the fish were targeted. Monkfish gillnetting in the Gulf of Maine was already considered to be an extension of the "Northeast sink gillnet fishery" (60 FR 67063, December 28, 1995).

NMFS has recently become aware of additional species being targeted and, therefore, proposes to expand the list of fish species to include, but not be limited to: all species defined in the Northeast Multispecies FMP (American plaice, Atlantic cod, Atlantic halibut, haddock, ocean pout, offshore hake, pollock, red hake [ling], redfish, silver hake [whiting], white hake, windowpane flounder, winter flounder, witch flounder and yellowtail flounder),

as well as spiny dogfish, monkfish, shad, skate and mackerel.

Northeast Anchored Float Gillnet Fishery

NMFS proposes to expand the list of target species associated with the "Northeast anchored float gillnet fishery" to include, but not be limited to: shad, herring, mackerel and menhaden. NMFS proposed the 2001 reclassification of the "Gulf of Maine small pelagics surface gillnet fishery" to the "Northeast anchored pelagic gillnet fishery" (66 FR 6545, January 22, 2001) to incorporate fishing effort in other Northeast areas and to include catch other than small pelagics. However, due to changes in recording gillnet fishing effort and the need to better distinguish Atlantic gillnet fisheries by gear type, the fishery was classified as the "Northeast anchored float gillnet" (66 FR 42780, August 15, 2001). Upon the classification of sturgeon as a prohibited species in state and Federal waters, NMFS removed the "Gulf of Maine, Southeast U.S. Atlantic coastal shad, sturgeon gillnet fishery" from the LOF. Gillnet fishing for shad in the Northeast was reorganized and recategorized into the "Northeast sink gillnet fishery", "Northeast anchored float gillnet fishery", and/or the "Northeast drift gillnet fishery depending on the type of gear used (66 FR 6545, January 22, 2001).

Northeast Drift Gillnet Fishery

NMFS proposes to clarify the list of target species associated with the "Northeast drift gillnet fishery". Upon the classification of sturgeon as a prohibited species in state and Federal waters, NMFS removed the "Gulf of Maine, Southeast U.S. Atlantic coastal shad, sturgeon gillnet fishery" from the LOF. Gillnet fishing for shad in the Northeast is included in the "Northeast sink gillnet fishery", "Northeast anchored float gillnet fishery", and/or the "Northeast drift gillnet fishery" depending on the type of gear used. NMFS therefore proposes to expand the list of target species in the Northeast drift gillnet to include, but not be limited to, shad, herring, mackerel and menhaden.

Mid-Atlantic Gillnet Fishery

NMFS proposes to expand the list of target species associated with the "Mid-Atlantic gillnet fishery" to include, but not be limited to: Atlantic croaker, mackerel, black drum, bluefish, herring, menhaden, scup, shad, striped bass, weakfish, white perch, yellow perch, shark (large and small coastal shark, dogfish), and monkfish. This fishery includes recently expanded gillnet effort for large and small coastal shark in the mid-Atlantic. Atlantic sturgeon are listed as a species of concern under the Endangered Species Act, and a moratorium on possession and harvest of this species currently exists throughout the U.S. East Coast.

In addition, NMFS proposes to clarify the type of gear associated with this fishery to include gillnets set in a sink, stab, set, strike, or drift fashion. This fishery includes any residual large pelagic driftnet effort in the mid-Atlantic.

NMFS also proposes to change language defining the mid-Atlantic gillnet fishery by removing "...west of 72° 30'W. and north of a line extending due east from the North Carolina/South Carolina border..." (62 FR 33, January 2, 1997) and replacing this with "...west of a line drawn at 72° 30'W. long south to 36° 33.03'N. lat. and east to the eastern edge of the EEZ and north of the North Carolina/South Carolina border...". This wording is more consistent with proposed management area boundaries for gillnet fisheries under the ALWTRP regulations. As the ALWTRP management areas for gillnet fisheries consider the LOF definitions, consistency between the two boundaries may reduce confusion.

Atlantic Mixed Species Trap/Pot Fishery

NMFS proposes to expand the list of target species associated with the "Atlantic mixed species trap/pot fishery". NMFS added the category II "Atlantic mixed species trap/pot fishery" to the 2003 LOF to encompass the "Northeast trap/pot fishery", the "mid-Atlantic mixed species trap/pot fishery", the "U.S. mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot" fisheries and any other trap/pot fisheries otherwise not identified in the LOF, based on the use of similar gear and the potential for marine mammal entanglements. NMFS has recently become aware of additional species being targeted in this fishery. Therefore, NMFS proposes to expand the list of target species to include, but not be limited to: hagfish, shrimp, conch/whelk, red crab, Jonah crab, rock crab, black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), white hake, spot, skate, catfish and American eel (not included in the LOF's "U.S. mid-Atlantic eel trap/pot fishery" description).

Number of Vessels/Persons

NMFS proposes to update the number of participants in the "Southeastern U.S. Atlantic shark gillnet fishery" from 6 to 30.

NMFS proposes to update the number of participants in the "Mid-Atlantic gillnet fishery" from >655 to >670 to include the 15 participants targeting shark (e.g., large and small coastal shark, dogfish) in this fishery.

List of Species That are Incidentally Seriously Injured or Killed

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

NMFS proposes to add Northern bottlenose whales (Western North Atlantic stock) to the list of species and stocks incidentally killed or seriously injured in the "Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery". A bottlenose whale was observed to be entangled and seriously injured in this fishery in 2001.

NMFS has reviewed the other species listed as incidentally killed or seriously injured in this fishery. Although some species have not been observed to have been seriously injured or killed within the most recent 5–year timeframe for which estimates of marine mammal bycatch are made, the fishery still operates in the same general areas and uses the same type of gear, with the exception of the requirement for fishermen to now use circle hooks. The impacts of the use of circle hooks on reducing marine mammal incidental serious injury and mortality are still being analyzed. Therefore, NMFS has determined that no other changes to the list of species killed or seriously injured in this fishery is warranted at this time. NMFS will reassess the list of species incidentally seriously injured or killed in this fishery as more information becomes available.

Mid-Atlantic Haul/Beach Seine Fishery

NMFS proposes to remove harbor porpoise (Gulf of Maine/Bay of Fundy stock) from the list of species or stocks incidentally killed or seriously injured in the "Mid-Atlantic haul/beach seine fishery". The most recent SAR (2005) highlights the most recent 5–years of data (from 1999–2003), as well as anecdotal or historical information, as records of interaction. There is no current evidence to indicate harbor porpoises are killed or seriously injured in the Mid-Atlantic haul/beach seine fishery.

Gulf of Maine Atlantic Herring Purse Seine Fishery

NMFS proposes to remove harbor porpoise (Gulf of Maine/Bay of Fundy stock) from the list of species or stocks incidentally killed or seriously injured in the "Gulf of Maine Atlantic herring purse seine fishery". The most recent

SAR (2005) highlights the most recent 5–years of data (from 1999–2003), as well as anecdotal or historical information, as records of interaction. There is no current evidence to indicate harbor porpoises are killed or seriously injured in the Gulf of Maine Atlantic herring purse seine fishery.

Mid-Atlantic Gillnet Fishery

NMFS proposes to remove the superscript (1) from bottlenose dolphin (Western North Atlantic offshore stock) and minke whale (Canadian east coast stock) on the list of stocks incidentally killed or seriously injured in the "Mid-Atlantic gillnet fishery". In 1996 the mid-Atlantic gillnet fishery was elevated from category III to category II based on a tier analysis focused on the incidental mortality and serious injury of harbor porpoise, coastal bottlenose dolphin, and humpback whales (60 FR 67081, December 28, 1995). For re-classification to a category I fishery in the 2002 LOF, the tier analysis was based on the incidental mortality and serious injury of coastal bottlenose dolphins (68 FR 1422, January 10, 2003). Though offshore bottlenose dolphins and minke whales have the potential to interact with the mid-Atlantic gillnet fishery, these species have not influenced the fishery classification or its elevation; therefore, NMFS proposes to remove the superscript (1).

Northeast Bottom Trawl

NMFS proposes to correct a typographical error in the 2006 LOF, Table 2, by removing the superscript (1) after harp seals (WNA) in the "Northeast bottom trawl fishery". Mortality and serious injury of harp seals (WNA) does not drive the categorization of this fishery.

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 and stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience mortality or injury in a given fishery, but also includes species or stocks for which there are anecdotal 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. NMFS has designated those stocks that are responsible for a current fishery's classification by a "1".

There are several fisheries classified in Category II that have no recently documented interactions with marine mammals, or interactions that did not result in a serious injury or mortality. Justifications for placement of these fisheries, which are greater than 1 percent of a stock's PBR level, 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 a "Category II fishery" in 50 CFR 229.2. NMFS has designated those fisheries originally listed by analogy in Tables 1 and 2 by a "2" after the fishery's name.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

TABLE 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. Harbor seal, CA Harbor porpoise, Central CA[1] Long-beaked common dolphin, CA Northern elephant seal, CA breedingSea otter, CA Short-beaked common dolphin, CA/OR/WA
CA/OR thresher shark/swordfish drift gillnet (≥ 14 in. mesh)	85	California sea lion, U.S. Dall's porpoise, CA/OR/WA Fin whale, CA/OR/WA Gray whale, Eastern North Pacific Humpback whale, Eastern North Pacific Long-beaked common dolphin, CA Northern elephant seal, CA breeding Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA[1] Sperm whale, CA/OR/WA
LONGLINE/SET LINE FISHERIES:		

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line	140	Blainville's beaked whale, HI Bottlenose dolphin, HI False killer whale, HI[1] Humpback whale, Central North Pacific Pantropical spotted dolphin, HI Risso's dolphin, HI Short-finned pilot whale, HI Spinner dolphin, HI Sperm whale, HI
Category II		
GILLNET FISHERIES:		
AK Bristol Bay salmon drift gillnet[2]	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.[1]
AK Bristol Bay salmon set gillnet[2]	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 set gillnet	745	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Humpback whale, Central North Pacific[1] Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	576	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA[1] Harbor seal, GOA Steller sea lion, Western U.S.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA[1] Harbor seal, GOA Sea otter, Southwest AK Steller sea lion, Western U.S.
AK Metlakatla/Annette Island salmon drift gillnet[2]	60	None documented
AK Peninsula/Aleutian Islands salmon drift gillnet[2]	164	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet[2]	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[1] Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Steller sea lion, Western U.S.[1]

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Southeast salmon drift gillnet	481	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific[1] Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet[2]	170	Gray whale, Eastern North Pacific Harbor seal, Southeast AK Humpback whale, Central North Pacific (Southeast AK)
CA yellowtail, barracuda, and white seabass drift gillnet fishery (mesh size > 3.5 inches and < 14 inches)[2]	24	California sea lion, U.S. Long-beaked common dolphin, CA Short-beaked common dolphin, CA/OR/WA
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded)	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA[1] Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Southeast salmon purse seine	416	Humpback whale, Central North Pacific[1]
AK Kodiak salmon purse seine	370	Humpback whale, Central North Pacific[1]
CA anchovy, mackerel, tuna purse seine	110	Bottlenose dolphin, CA/OR/WA offshore1 California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Common dolphin, unknown Short-finned pilot whale, CA/OR/WA[1]
CA tuna purse seine[2]	10	Common dolphin, unknown None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands flatfish trawl	26	Bearded seal, AK Harbor porpoise, Bering Sea Harbor seal, Bering Sea Killer whale, AK resident[1] Northern fur seal, Eastern North Pacific Spotted seal, AK Steller sea lion, Western U.S.[1] Walrus, AK
AK Bering Sea, Aleutian Islands pollock trawl	120	Dall's porpoise, AK Harbor seal, AK Humpback whale, Central North Pacific[1] Humpback whale, Western North Pacific[1] Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient[1] Minke whale, AK Ribbon seal, AK Spotted seal, AK Steller sea lion, Western U.S.[1]
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Pacific cod longline	114	Killer whale, AK resident[1] Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient[1] Ribbon seal, AK Steller sea lion, Western U.S.
CA pelagic longline[2]	6	California sea lion, U.S. Risso's dolphin, CA/OR/WA

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
OR swordfish floating longline[2]	0	None documented
OR blue shark floating longline[2]	1	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific[1] Humpback whale, Western North Pacific[1]
Category III		
GILLNET FISHERIES:		
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 inshore gillnet	35	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S.Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented
AK octopus/squid purse seine	2	None documented
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
WA, OR sardine purse seine	42	None documented
HI Kona crab loop net	42	None documented
HI opelu/akule net	12	None documented
HI inshore purse seine	23	None documented

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
HI throw net, cast net	14	None documented
WA (all species) beach seine or drag seine	235	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA marine shellfish aquaculture	unknown	None documented
CA salmon enhancement rearing pen	>1	None documented
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented
OR salmon ranch	1	None documented
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries	1,530 (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
Commonwealth of the Northern Mariana Islands tuna troll	88	None documented
Guam tuna troll	401	None documented
HI trolling, rod and reel	1,321	None documented
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Greenland turbot longline	12	Killer whale, AK resident Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient
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	1,302	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	Sperm whale, North Pacific Steller sea lion, Eastern U.S.
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish)	731	None documented
American Samoa longline	60	None documented
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	8	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	87	Harbor seal, Bering Sea Steller sea lion, Western U.S.
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	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	83	Fin whale, Northeast Pacific Northern elephant seal, North Pacific Steller sea lion, Western U.S.
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
CA halibut bottom trawl	53	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, CA/OR/WA Steller sea lion, Eastern U.S.
WA, OR, CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
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	Harbor seal, GOA
AK Southeast Alaska crab pot	unknown	Humpback whale, Central North Pacific (Southeast AK)
AK Southeast Alaska shrimp pot	unknown	Humpback whale, Central North Pacific (Southeast AK)
AK octopus/squid pot	72	None documented

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Gray whale, Eastern North Pacific Harbor seal, CA Humpback whale, Eastern North Pacific Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	Humpback whale, Eastern North Pacific Gray whale, Eastern North Pacific
WA, OR, CA sablefish pot	176	None documented
WA, OR shrimp pot/trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	0	Hawaiian monk seal
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline 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	200	None documented
HI aku boat, pole and line	4	None documented
HI Main Hawaiian Islands, Northwest Hawaiian Islands deep sea bottomfish	300	Hawaiian monk seal
HI inshore handline	307	None documented
HI tuna handline	298	Hawaiian monk seal
WA groundfish, bottomfish jig	679	None documented
Western Pacific squid jig	6	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	30	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented
BAIT PENS:		
WA/OR/CA bait pens	13	California sea lion, U.S.
DREDGE FISHERIES:		

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
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 black coral diving	1	None documented
HI fish pond	N/A	None documented
HI handpick	37	None documented
HI lobster diving	19	None documented
HI squiding, spear	91	None documented
WA, CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	Killer whale, stock unknown Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
HI charter vessel	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented

List of Abbreviations and Symbols Used in Table 1: AK - Alaska; CA - California; GOA - Gulf of Alaska; HI - Hawaii; OR - Oregon; WA - Washington; [1] - Fishery classified based on serious injuries and mortalities of this stock are greater than 1 percent of the stock's PBR; [2] - Fishery classified by analogy.

TABLE 2 - LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTICOCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery Description	Estimated ι of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Category I		
GILLNET FISHERIES:		

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

Fishery Description	Estimated ι of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Mid-Atlantic gillnet	>670	Bottlenose dolphin, WNA coastal[1] Bottlenose dolphin, WNA offshore Common dolphin, WNA Gray seal, WNA Harbor porpoise, GME/BF[1] Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine[1] Long-finned pilot whale, WNA Minke whale, Canadian east coast Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast sink gillnet	341	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF[1] Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, WNA[1] Minke whale, Canadian east coast[1] North Atlantic right whale, WNA[1] Risso's dolphin, WNA White-sided dolphin, WNA
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	94	Atlantic spotted dolphin, Northern GMX Atlantic spotted dolphin, WNA Bottlenose dolphin, 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[1] Mesoplodon beaked whale, WNA Northern bottlenose whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Pygmy sperm whale, WNA[1] Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA[1]
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Fin whale, WNA Harbor seal, WNA Humpback whale, WNA[1] Minke whale, Canadian east coast[1] North Atlantic right whale, WNA[1]
Category II		
GILLNET FISHERIES:		
Chesapeake Bay inshore gillnet[2]	45	None documented
Gulf of Mexico gillnet[2]	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal[1]

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

Fishery Description	Estimated ı of vessels/per-sons	Marine mammal species and stocks incidentally killed/injured
Northeast anchored float gillnet[2]	133	Harbor seal, WNA Humpback whale, WNA White-sided dolphin, WNA
Northeast drift gillnet[2]	unknown	None documented
Southeast Atlantic gillnet[2]	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	30	Atlantic spotted dolphin, WNA Bottlenose dolphin, WNA coastal[1] North Atlantic right whale, WNA
TRAWL FISHERIES:		
Mid-Atlantic mid-water trawl (including pair trawl)	620	Bottlenose dolphin, WNA offshore Common dolphin, WNA Long-finned pilot whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA[1]
Mid-Atlantic bottom trawl	>1,000	Common dolphin, WNA[1] Long-finned pilot whale, WNA[1] Short-finned pilot whale, WNA[1]
Mid-Atlantic flynet[2]	21	None documented
Northeast mid-water trawl (including pair trawl)	17	Harbor seal, WNA Long-finned pilot whale, WNA[1] Short-finned pilot whale, WNA[1] White-sided dolphin, WNA
Northeast bottom trawl	1,052	Common dolphin, WNA Harbor porpoise, GME/BF Harp seal, WNA[1] Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA[1]
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal[1] West Indian manatee, FL[1]
Atlantic mixed species trap/pot[2]	unknown	Fin whale, WNA Humpback whale, Gulf of Maine
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal[1] Bottlenose dolphin, Western GMX coastal
Mid-Atlantic menhaden purse seine[2]	22	Bottlenose dolphin, WNA coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal[1]
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal[1]
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal[1]
POUND NET FISHERIES:		
Virginia pound net	187	Bottlenose dolphin, WNA coastal[1]

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

Fishery Description	Estimated ι of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
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
Southeast Atlantic inshore gillnet	unknown	None documented
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	972	None documented
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX outer continental shelf Bottlenose dolphin, Northern GMX continental shelf edge and slope
Gulf of Mexico mixed species trawl	20	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian Manatee, FL
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
U.S. Atlantic tuna purse seine	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
U.S. Mid-Atlantic hand seine	>250	None documented
LONGLINE/HOOK-AND-LINE FISHERIES:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	46	None documented
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	Humpback whale, WNA
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

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

Fishery Description	Estimated ı of vessels/persons	Marine mammal species and stocks incidentally killed/injured
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
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
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	Gray seal, Northwest North Atlantic Harbor porpoise, GME/BF Harbor seal, WNA Minke whale, Canadian east coast White-sided dolphin, WNA
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the North Carolina roe mullet stop net)	751	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		

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

Fishery Description	Estimated ι of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel	4,000	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, WNA coastal

List of Abbreviations and Symbols Used in Table 2: 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; [1] - Fishery classified based on serious injuries and mortalities of this stock are greater than 1 percent of the stock's PBR; [2] - Fishery classified by analogy.

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 proposed rule would not have a significant economic impact on a substantial number of small entities. 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 (with the exception of those in regions with a registration integrated with existing state and Federal permitting processes). 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 42,000 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, less than 360 fishers register directly with NMFS under the MMPA authorization program.

Though this proposed rule would affect less than 360 small entities, the $25 registration fee, with respect to anticipated revenues, is not considered a significant economic impact. If a vessel is requested to carry an observer, fishers will not incur any economic costs associated with carrying that observer. As a result of this certification, an initial regulatory flexibility analysis was not prepared. In the event that reclassification of a fishery to Category I or II results in a take reduction plan, economic analyses of the effects of that plan will be summarized in subsequent rulemaking actions.

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

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

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

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

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

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

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

Dated: November 27, 2006.

Samuel D. Rauch III,

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

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