

ADVISORY BODY REVIEW OF THE LIST OF FISHERIES

The Marine Mammal Protection Act (MMPA) requires that National Marine Fisheries Service (NMFS) publish an annual List of Fisheries (LOF) that classifies U.S. commercial fisheries into one of three categories with respect to the level of serious injury and mortality of marine mammals that occurs incidental to the fishery. The categories are based on whether the fishery has frequent, occasional, or a remote likelihood of, or no known mortality or serious injury of marine mammals. Details of the categories, requirements, and the 2007 LOF are contained in Attachments 1 and 2. Table 1 on page 14479 of Attachment 2 lists Pacific Ocean fisheries.

At the April Council meeting, the Regional Administrator of the NMFS Southwest Region invited the Council to review and comment on the 2007 LOF in order to provide recommendations for any changes to the 2008 LOF which will be published in November 2007. While this review is not part of the Council agenda, advisory bodies are invited to review the 2007 LOF and provide their recommendations as supplemental attachments to this informational report which will be forwarded to NMFS for consideration in finalizing the 2008 LOF.

PFMC
05/22/07



NOAA Fisheries

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List of Fisheries (LOF)

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Background

Under [section 118](#) [pdf] [59 KB] of the [Marine Mammal Protection Act \(MMPA\)](#), NOAA Fisheries must publish, at least annually, a List of Fisheries (LOF) that classifies U.S. commercial fisheries into one of three categories. These categories are based on the level of [serious injury](#) [pdf] and mortality of marine mammals that occurs incidental to each fishery. Specifically, the MMPA mandates that each fishery be classified according to whether it has frequent, occasional, or a remote likelihood of or no known incidental mortality or serious injury of marine mammals.



Entangled Dall's Porpoise
(*Phocoenoides dalli*)
Photo: NOAA

Fishery Classification Criteria

NOAA Fisheries has developed and implemented fishery classification criteria, which consists of a two-tiered, stock-specific approach. This two-tiered approach 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 the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to a stock's Potential Biological Removal (PBR) level. The PBR level is defined in [50 CFR 229.2](#) 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.

Tier 1:

- If the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of this stock, all fisheries interacting with this stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier 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.
- **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.
- **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 for a particular stock.

Additional details regarding how threshold percentages between the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA ([60 FR 45086](#) [pdf] [95 KB], 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 according to its highest level of classification (e.g., a fishery that qualifies for Category III for one marine mammal stock and Category II for another marine mammal stock will be listed under Category II).

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

The LOF includes two tables that list all U.S. commercial fisheries by 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.

Lists of Fisheries

Year	Proposed	Final
2007	[pdf] [136 KB]	[pdf] [159 KB]
2006	[pdf] [1.6 MB]	[pdf] [135 KB]
2005	[pdf] [931 KB]	[pdf] [1.9 MB]
2004	[pdf] [1.1 MB]	[pdf] [114 KB]
2003	[pdf] [100 KB]	[pdf] [99 KB]
2002	Notice of Continuing Effect [pdf] [73 KB]	
2001	[pdf] [127 KB]	[pdf] [119 KB]
2000	Notice of Continuing Effect [pdf] [142 KB]	
1999	[pdf] [74 KB]	[pdf] [163 KB]
1998	[pdf] [52 KB]	[pdf] [95 KB]
1997	[pdf] [38 KB]	[pdf] [154 KB]
1996	[pdf] [17 KB]	[pdf] [115 KB]

- [2005 Environmental Assessment on the LOF](#) [pdf] [410 KB]

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

Any vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must comply with [50 CFR 229.6](#) and [report all incidental injuries or mortalities of marine mammals](#) [pdf] that occur during commercial fishing operations to NMFS. "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 and must be reported.

Requirements for Category I and II Fisheries

Registration

Owners of vessels or gear engaging in a Category I or II fishery, are required under [50 CFR 229.4](#) to obtain a marine mammal authorization by registering with the [Marine Mammal Authorization Program \(MMAP\)](#). You must register through a [NMFS Regional Office](#) unless you participate in a fishery that has an integrated registration program. Upon receipt of a completed registration, NMFS will issue vessel or gear owners a decal to display on their vessels and an authorization certificate that must be in the possession of the operator while fishing. The procedures and fees associated with registration differ between Regions.

For some fisheries, NMFS has integrated the MMPA registration process with existing

state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to pay the \$25 registration fee.

Observers

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

Take Reduction Planning

Fishers participating in a Category I or II fishery are required to comply with any applicable [take reduction plans](#). NMFS may develop and implement take reduction plans for any Category I or II fishery that interacts with a strategic stock.



■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Wofford Heights, California, Channel 251A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7-5565 Filed 3-27-07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 061106290-7059-02, 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: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is publishing its final List of Fisheries (LOF) for 2007, as required by the Marine Mammal Protection Act (MMPA). The final 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: This final rule is effective April 27, 2007.

The Alaska Cook Inlet set gillnet fishery, Alaska Cook Inlet salmon purse seine fishery, Alaska Kodiak salmon purse seine fishery, California tuna purse seine fishery, Mid-Atlantic mid-

water trawl (including pair trawl) fishery, and Mid-Atlantic flynet fishery are considered to be Category II fisheries on April 27, 2007, and are required to comply with all requirements of Category II fisheries (i.e., complying with applicable registration requirements, complying with applicable take reduction plan requirements, and carrying observers, if requested) on that date.

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

Written comments regarding the burden-hour estimates or other aspects of the information collection requirements contained in this final rule may be submitted to NMFS, Attn: Patricia Lawson, fax: 301-427-2522 or *Patricia.Lawson@noaa.gov*, or the Office of Management and Budget, Attn: David Rostker, fax: 202-395-7285 or *David_Rostker@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT:

Melissa Andersen, Office of Protected Resources, 301-713-2322; David Gouveia, Northeast Region, 978-281-9328; Nancy Young, Southeast Region, 727-551-5607; Elizabeth Petras, Southwest Region, 562-980-3238; Brent Norberg, Northwest Region, 206-526-6733; Bridget Mansfield, Alaska Region, 907-586-7642; Lisa Van Atta, Pacific Islands Region, 808-944-2257. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the LOF and the Marine Mammal Authorization Program, including registration procedures and forms, current and past LOFs, observer requirements, and marine mammal injury/mortality reporting forms and submittal procedures, may be obtained at: <http://www.nmfs.noaa.gov/pr/interactions/mmmap>, 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 mortality or serious injury 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 or a Take Reduction Plan). 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 marine mammal 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 web site at: <http://www.st.nmfs.gov/st4/nop/>.

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

This final rule includes 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 Final 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/>.

Comments and Responses

NMFS received 9 comment letters on the proposed 2007 LOF (71 FR 70339, December 4, 2006) from environmental, commercial fishing, and Federal and state interests. Comments on issues outside the scope of the LOF were noted, but are not responded to in this final rule.

General Comments

Comment 1: One commenter recommended NMFS continue to support current research efforts, and support and engage in additional research, on depredation and associated fishery interactions. Research should focus on developing means of reducing or controlling depredation rates and

minimizing or mitigating any serious injuries or deaths of marine mammals from depredation-related interactions.

Response: NMFS has supported and will continue to support research efforts intended to better understand the nature of depredation-related interactions, to reduce the risk of serious injury and mortality to marine mammal stocks, and to investigate potential mitigation strategies.

Through the Take Reduction Team (TRT) process, NMFS has developed and implemented successful gear research components to several Take Reduction Plans (TRP). Specifically, NMFS has allocated research funding for several TRPs including the Atlantic Trawl Gear, Atlantic Large Whale, Pelagic Longline, and Bottlenose Dolphin TRPs. The research identified by the respective TRTs allows NMFS to better understand the behavior of several marine mammal species. The recommended research included techniques such as the use of video cameras to document marine mammal interactions with various gear types in hopes of gaining a better understanding of whether these interactions are a result of depredation of the target species by the marine mammals, or other behavioral factors. This knowledge will provide insights into what types of mitigation measures can be implemented in order to minimize the serious injuries and mortalities associated with depredation-related interactions. Various gear modifications are routinely researched to reduce the risk of interactions and serious injury and mortality of marine mammals should an entanglement occur.

NMFS also gathers information on marine mammal depredation in fisheries from various sources including, fishery observer records, vessel logbooks, data collected during dockside surveys, independent researchers, State agencies, and the general public. NMFS uses this information to monitor fisheries and evaluate whether action is needed to prevent or limit depredation in order to protect marine mammals. For example, in the past NMFS has participated in a program to conduct research in California, Oregon, and Washington examining pinniped depredation in various fisheries and develop methods to reduce or control the depredation. However, funding for this program was eliminated in 2005 and it is not known if funding will be re-instituted in the future. Also, NMFS is currently reviewing the issues related to depredation by false killer whales in the Hawaii-based longline fishery and is supportive of research efforts to reduce

false killer whale take. NMFS continues to seek ways to support and participate in research on depredation and the development of deterrent methods, within existing budget constraints.

Comment 2: One commenter recommended NMFS work with regional Fishery Management Councils to improve monitoring and mitigation of serious injury and mortality rates incidental to trap/pot fisheries. Interactions with trap/pot gear are known to occur. However, the frequency is difficult to quantify because traditional fishery observer programs are unlikely to observe entangled animals, particularly large whales that often carry entangling gear away. In absence of better monitoring, characterization of such problems is often based on anecdotal information.

Response: NMFS has been often unable to identify lines wrapped on entangled whales conclusively or determine to which specific fishery gear belongs, including whether it is a commercial or recreational fishery. This is particularly difficult for pot gear, when often just a single line or line with an unidentified buoy is found associated with an entangled whale. This information is critically important in assigning fisheries under the LOF, and NMFS will only assign a serious injury or mortality to a specific fishery when gear can be identified to that fishery with a high degree of certainty. NMFS is working to improve the ability to identify such gear found on entangled whales.

NMFS agrees that quantifying entanglement rates in the trap/pot fishery would be difficult through an observer program due to the low likelihood of observing an entanglement. However, other means of collecting information on entanglements of marine mammals are also available. For example, information regarding fishery interactions with marine mammals is included in reports by fishermen collected under the Marine Mammal Authorization Program (MMAP), under which all commercial vessel owners or operators, regardless of the category of fishery they participate in, must report all incidental injuries and mortalities of marine mammals. Stranding data is also used to collect information on entanglements.

Trap/pot fisheries are of interest based on available information concerning trap/pot gear interactions with large whales in the Atlantic, Pacific, and Alaska, and bottlenose dolphins in the Southeast Atlantic and Gulf of Mexico. In the Atlantic Ocean and Gulf of Mexico, NMFS has funded, and plans to continue to fund based on available

resources, several research projects for mitigating blue crab trap/pot interactions with bottlenose dolphins in the Southeast Atlantic and Gulf of Mexico. Many of these projects have been incorporated into non-regulatory components of the Bottlenose Dolphin Take Reduction Plan. NMFS is considering folding trap/pot fisheries into the Atlantic Large Whale Take Reduction Plan (ALWTRP) in an upcoming action. The Atlantic Large Whale Take Reduction Team (ALWTRT) currently emphasizes the incorporation of the regional fishery management councils by asking council representatives to serve as team members. NMFS will raise this issue with council representatives at future meetings to further the discussion.

In the Pacific Ocean, NMFS plans to communicate with the Pacific Fisheries Management Council when considering current fishery descriptions for trap/pot fisheries, as well as when assessing potential changes to fishery descriptions to more accurately reflect differences in trap gear fisheries and the likelihood for interactions with marine mammals.

In Alaska, a high proportion of all humpback whale entanglements are thought to be from pot gear relative to other fishery sources, while in reality the proportion of entanglements resulting in known serious injuries and mortalities from known or assumed pot gear when compared to serious injury and mortalities from all entanglements is not as high. From 2001 through 2005 there were 40 humpback whale entanglements attributed to commercial or recreational fisheries, and 15 (37.5 percent) of those were thought to be from various pot gear, although that is not conclusive. Of those 40 humpback whale entanglements, 17 (42.5 percent) were serious injuries or mortalities, all attributed to commercial fisheries. Five of the 17 (29 percent) serious injuries or mortalities were thought to be from various pot gear. Therefore, from 2001–2005, 5 of the overall 40 humpback whale entanglements, or 12.5 percent, resulted in serious injuries or mortalities thought to be from various pot gear.

Determining whether an entanglement results in a serious injury (one that leads to mortality) is a challenge for NMFS, and an improved approach to this is needed, and the agency is working toward that end. In the Alaska region, NMFS is working to increase public awareness of the dangers to whales of vertical lines in the water column, and is asking for voluntary cooperation to minimize the amount of vertical line in the water column where possible and in marking personal and commercial gear.

Working with marine mammal researchers, the fishing industry, and NOAA Sea Grant over the past several years, the Alaska Stranding Program has increased community outreach.

Cooperative, ongoing efforts include community meetings, informal working groups, increased disentanglement response training, developing a vessel wheelhouse guide on preventive measures and reporting information, investigating deterrent uses, improved reporting, and acquisition of additional response equipment, including adding a response vessel to the program, and satellite telemetry tags and buoys. Ultimately, the goal is entanglement reduction and prevention.

Comment 3: One commenter stated that the length of the public comment period (30 days) on the proposed rule does not allow appropriate time for formal review and comment by Fishery Management Councils, protected resources committees, industry advisors, and individuals.

Response: NMFS believes the 30-day comment period allowed for adequate review and comment on this proposed rule.

Comment 4: One commenter noted that the categorization of fisheries under the MMPA is not congruent with fishery management units defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). Congruency between the definitions under MSFCMA and the categorization of fisheries under the MMPA would facilitate the process of moving towards an ecosystem approach to management, i.e., for the management of fisheries resources and the conservation of marine mammal stocks.

Response: The MSFCMA defines fishery listings based on fish species and fish stocks, while the MMPA defines fishery listings based on marine mammal stocks and their interactions with fishing gear types. Since multiple fishing gear types are usually covered under each Fishery Management Plan (FMP), categorizing marine mammal interactions with fisheries on an FMP basis is usually not appropriate. To help minimize confusion associated with the different fishery definitions, the agency will continue, as appropriate, to make modest changes to facilitate cooperation with regional Fishery Management Councils (see responses to comments 2 and 3).

Comment 5: The proposed rule states that less than 360 small entities will be affected by the LOF due to the cost of permits and that no economic costs will be incurred by vessels requested to carry an observer. This evaluation fails to recognize the burden of carrying an

observer, especially on smaller fishing vessels that may have to operate with one less crew member to accommodate the observer. This could lead to operational inefficiencies and loss of revenue.

Response: An Environmental Assessment (EA) was prepared for the Final 2006 LOF, which included a full Regulatory Impact Review (RIR). The effects on small entities were discussed and analyzed as part of the RIR. Impacts to small entities including the impacts associated with carrying an observer were adequately addressed. A full copy of the December 2005 EA can be obtained at: http://www.nmfs.noaa.gov/pr/pdfs/interactions/lof_ea.pdf.

In addition, under section 118(d)(6)(B) of the MMPA, NMFS is not required to place an observer on a Category I or II vessel if the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized (also stated in 50 CFR 229.7(c)(3)).

Comment 6: NMFS did not provide sufficient notice in the proposed rule to inform fishermen that their fishery is proposed for elevation and the associated more stringent regulations. Also, the holiday season falling within the comment period (December 4, 2006–January 3, 2007) made it difficult to find credible information and to contact agency staff to allow public involvement.

Response: See Comment Response 3 above.

Comment 7: One commenter viewed the LOF fishery classification system as inaccurate, under which NMFS is downplaying the highly destructive nature of commercial fisheries. NMFS does not sufficiently monitor these fisheries; therefore, many more fisheries should be classified higher on the LOF to allow for observer coverage.

Response: NMFS believes that the fishery classification system is accurate. The current fishery classification system, which continues to be widely accepted by the scientific community and the fishing industry, is based on a two-tiered, stock-specific approach that first addresses the total impacts of all fisheries on each marine mammal stock and then addresses the impacts of individual fisheries on each stock.

Please see **SUPPLEMENTARY INFORMATION** for additional information on the classification criteria. NMFS implemented the classification criteria in the final regulations to implement the 1994 amendments to the MMPA (60 FR 45086, August 30, 1995) after ample consider of comments and suggestions

from the public. NMFS also finalized an Environmental Assessment (EA) in August, 1995, to analyze the impacts of the regulations implementing the 1994 amendment on the environment and the public, and finalized a revised EA in December 2005 on the process of classifying U.S. commercial fisheries. To determine whether changes in fishery classification are warranted, NMFS reviews all marine mammal incidental injury and mortality information presented in the Stock Assessment Reports (SARs). NMFS' SARs are based on the best available scientific information available at the time of publication. The SARs are peer-reviewed by regional Scientific Review Groups (SRGs), created by the MMPA to review the science that informs the SARs.

NMFS regularly monitors commercial fisheries in the U.S. and reviews data gathered by the National Observer Program, fisher self-reports, stranding data, and other information when categorizing fisheries based on the level of interactions with marine mammals. Category I and II fisheries are required to register with NMFS, to carry NMFS observers if requested, and comply with all applicable take reduction plan regulations. In addition, all fishermen, regardless of the classification of the fishery in which they operate, are required by the MMPA to report, within 48 hours of returning to port, any injury or mortality that occurs incidental to commercial fishing operations. NMFS also reviews other sources of information, such as stranding data, to assess whether elevation of a Category III fishery is warranted, thereby requiring the fishery to carry observers, if requested.

Comment 8: One commenter reiterated previous letters on the 2005 and 2006 LOFs calling for the inclusion of observer coverage on the LOF. The SARs usually include estimates of observer coverage only for fisheries known to interact with marine mammals, while fisheries for which interactions have not been documented in recent years are not described. Without this information, it is not possible to determine whether a given fishery was adequately observed and no interactions documented, or whether the fishery was not adequately observed and interactions may occur. For this reason, NMFS should describe the level of observer coverage for each fishery on the LOF.

Response: Including detailed information on the level, or percentage, of observer coverage to each fishery on the LOF will be of limited use without also including the confidence associated

with mortality/serious injury estimates generated from observer data. Presenting the level of observer coverage in the LOF without the associated confidence information will likely lead to misinterpretation of the information provided. Information including details of the interaction data, and the Coefficient of Variance (CV) for stock-specific information, is reported in the SARs. Please also see NMFS' response to a similar comment in the final LOF for 2006 (see Response to Comment 4 in 60 FR 48802, August 22, 2006).

NMFS continues to refer readers to the SARs for the most current, peer-reviewed information on observer coverage. Since 2005 each SARs includes an Appendix with Category I and II fishery-specific information, including the level of observer coverage; therefore, this information does not need to be duplicated in the LOF. NMFS is continuing to work to build and improve the fisheries interaction information presented in order to provide a useful source of information for the reader. NMFS will consider this comment when considering improvements to the SARs appendices. The SARs can be accessed through the NMFS Office of Protected Resource's web site at: <http://www.nmfs.noaa.gov/pr.sars/>. Additional information can also be found on the National Observer Program web site at: <http://www.st.nmfs.gov/st4/nop/>.

Information beyond stating "interactions have not been documented in recent years" would be useful as further explanation and support for changes in fishery classifications or additions and deletions of stocks from the list of marine mammal species or stocks incidentally killed/injured in a fishery. For this reason, NMFS will present information associated with the level of observer coverage or lack of observer coverage, if available, as part of the justification for proposing changes in future LOFs.

Comment 9: One commenter reiterated a previous comment made on the 2004 LOF for inclusion of high seas fisheries on the LOF. Multiple high sea fisheries, in which U.S. flagged vessels operate, are known to interact or are likely to interact with marine mammals. Section 118 of the MMPA applies to "commercial fishing operations by persons using vessels of the United States". Therefore, NMFS failure to include these high seas fisheries is unlawful. Specific fisheries suggested as additions are the Cobb Seamount fishery, Pacific Pelagic Squid Jig fishery, South Pacific Tuna Purse Seine fishery, and fisheries in the area of the Convention on the Conservation of

Antarctic Marine Living Resources (CCAMLR) including the Patagonian toothfish longline fishery and a trawl fishery for krill.

Response: NMFS is currently investigating available information on existing high seas fisheries in which U.S. nationals and flagged vessels participate, the estimated number of vessels/participants in these fisheries, and fishery interactions with marine mammal stocks on the high seas. NMFS will continue its investigation and consider the inclusion of high seas fisheries in future LOFs.

Comments on Fisheries in the Pacific Ocean

Comment 10: One commenter supported the elevation and addition of 3 Alaska fisheries, the AK Cook Inlet salmon set gillnet fishery, AK Cook Inlet salmon purse seine fishery, and AK Kodiak salmon purse seine fishery, to Category II.

Response: NMFS has added the AK Cook Inlet salmon set gillnet fishery as a Category II, and has elevated the AK Cook Inlet salmon purse seine fishery and the AK Kodiak salmon purse seine fishery to Category II, on the 2007 LOF.

Comment 11: One commenter stated that NMFS' proposed elevation or addition of 3 Alaska nearshore fisheries, the AK Cook Inlet salmon set gillnet fishery, AK Cook Inlet salmon purse seine fishery, and AK Kodiak salmon purse seine fishery, highlights the importance of monitoring interactions in state-managed fisheries. The Alaska Marine Mammal Observer Program (AMMOP) has not been funded sufficiently or consistently and does not provide an adequate basis for characterizing the full extent of such interactions. NMFS should increase and maintain funding for the AMMOP at levels sufficient for reasonable assessment of marine mammal take levels in AK state-managed fisheries or consider alternative means for assessing take levels and their population impacts.

Response: The cost of the Alaska Marine Mammal Observer Program is very high, relative to other observer programs around the country, due to the remote nature of the fisheries observed. To offset such high costs, NMFS is investigating alternatives to implementing full observer programs in these fisheries, such as observing focused portions of the fisheries.

Comment 12: Estimates of abundance and PBR level are not readily available for North Pacific sperm whales. NMFS should develop a scientifically sound estimate of this stock's abundance and PBR level that can be used to evaluate

potential fishery impacts. For example, sperm whales are known to depredate on catch in the sablefish longline fishery and at least one serious injury of a sperm whale has been observed, with the current estimate of injury/mortality at 0.45 whales/year. This rate may increase if depredation becomes more widespread.

Response: At this time, resources are not available to assess the abundance of North Pacific sperm whales in order to calculate a PBR level.

Comment 13: One commenter recommended NMFS expedite analyses of humpback whale stock structure in the North Pacific and increase efforts to observe entangled and stranded whales in southeastern Alaska to obtain accurate estimates of interactions with trap/pot fisheries. These analyses will better assess the potential impact of fishery interactions on the southeastern AK feeding aggregation of Central North Pacific humpback whales (which NMFS is currently considering designating as a separate stock), considering recent reports of stranded/entangled whales suggest interactions with trap/pot fisheries in southeastern Alaska may be unsustainable.

Response: The Structure of Populations, Levels of Abundance, and Status of Humpbacks (SPLASH) project collected information on humpback whales throughout the North Pacific. This project has only recently concluded. At this time, NMFS anticipates that some preliminary results may begin to be published in 2008 and may be considered during the preparation of the draft List of Fisheries for 2009.

Comment 14: One commenter referenced the case of a humpback whale removed from a set gillnet by NMFS personnel in June 2005. Although they were not successful in removing all the webbing, the animal swam away. We are not aware of conclusive information that provides a determination that mortality resulted from this incidental take.

Response: The Marine Mammal Protection Act (MMPA) requires that serious injuries and mortalities be included in consideration of the classification of fisheries under the annual List of Fisheries. NMFS has defined serious injury in 50 CFR 229.2 as an injury that is likely to lead to mortality. The agency convened a workshop in April 1997 to develop guidelines for a consistent approach for determining which injuries may be considered serious injuries. Results from that workshop were published as a NOAA Technical Memorandum in 1998 (NMFS-OPR-13, Angliss, R.P., and

D.P. DeMaster) and have been incorporated into the annual process of fisheries classification.

Current guidelines for making serious injuries determinations for marine mammals injuries resulting from entanglement in fishing gear include consideration of whether the animal's locomotion or feeding is or could be impaired by the entanglement. Information for each humpback whale entanglement in Alaska is reviewed by members of the Alaska Scientific Review Group (SRG), a Congressionally mandated regional advisory board to NMFS made up of marine mammal scientists. The SRG forwards to NMFS recommendations for each entanglement on whether the entanglement is likely to result in a serious injury or not. NMFS makes the final determination for each entanglement, taking into account the SRG's recommendation and the proper application of the serious injury determination guidelines.

NMFS anticipates holding a follow-up serious injury workshop in 2007 to update and advance the current guidelines for making serious injury determinations.

Comment 15: One commenter stated that the population of the Central North Pacific humpback whale stock appears to be increasing. Therefore, the take in the Cook Inlet set gillnet fishery, which is calculated to be 1.55 percent of the stock's PBR, should not trigger changing this fisheries' classification from Category III to Category II.

Response: There is evidence that the central North Pacific stock of humpback whales is increasing in at least portions of its range, such as in Southeast Alaska. However, it is not clear that this is the case throughout the range of the stock. Further, the results of the recent study of North Pacific humpback whales may indicate that the existing stock structure is incorrect and that smaller stocks may be more appropriate. Given the uncertainty in the rate of increase and stock structure, NMFS will classify this fishery using the classification criteria without adjusting for possible changes in abundance.

Comment 16: One commenter stated that the area in which the humpback whale take in 2005 occurred in Cook Inlet is remote, and that portion of the fishery is not conducted in the same time, area or methodology as 95 percent of the set gillnet fishery within Cook Inlet. The productivity of this small portion of the fishery is only 1 percent of the targeted sockeye salmon species. There has been no documented incidence with humpback whales in the Central or Northern districts of Upper Cook Inlet through the previous

observer program (1999–2000) or in the commercial fishery. Please consider listing Upper and Lower Cook Inlet set gillnet fisheries as separate fisheries on the List of Fisheries.

Response: NMFS organizes Alaska fisheries under the LOF by target, gear type, and geographic area. Separating the Upper and Lower Cook Inlet set gillnet fisheries into two fisheries on the LOF would not be consistent with the scale of identification of other Alaska state and Federal fisheries on the LOF.

The Alaska Department of Fish and Game manages the state fisheries at the local scale to achieve the success that they have in maintaining sustainable fish population levels, because salmon fishery management is based in large part on achieving local escapement goals. However, NMFS manages marine mammals by stocks, which generally cover large geographic areas in Alaska. The fisheries within or across those areas are classified under the LOF in order to track the relative impacts of the fisheries on the marine mammal stocks. Because of the large scale of Alaska and the high number of small, local fisheries throughout the state, NMFS believes that the geographic areas and other variables used to identify fisheries under the LOF are comprehensive enough to detect potential concerns with marine mammal-fishery interactions, but not so large that the local source becomes unclear. Under circumstances outlined in the MMPA, when fishery-related serious injuries and mortalities reach a level which trigger the need to institute focused take reduction measures, a finer scale of review is instituted. In such cases, detailed differences in gear, area, timing, effort, and other variables would be taken into account to address specific sources of marine mammal incidental serious injuries and mortalities.

Comment 17: One commenter noted errors in the number of permits issued in, and management of, the WA/OR purse seine fishery. The proposed rule states that OR and WA issued 26 and 16 permits, respectively, for the 2004 fishery, when the correct number of permits was 20 and 21, respectively. At that time, the OR fishery was a developmental fishery and the WA fishery was an experimental fishery. In 2006 the OR fishery operated as a state run limited entry fishery and WA remained an experimental fishery.

Response: The commenter is correct. OR and WA issued 20 and 21 permits, respectively, for the WA/OR purse seine fishery in 2004. The figures provided in the proposed rule, 26 permits issued in OR and 16 in WA, were incorrectly associated with the fishery for 2004. In

fact, 26 and 16 permits were issued for OR and WA, respectively in 2006. The commenter is also correct that OR become a limited entry fishery in 2006, while WA remained an emerging fishery.

Comment 18: Two commenters recommended elevating the CA lobster, prawn, shrimp, rock crab, fish pot fishery and the WA/OR/CA crab pot fishery to Category II based on interactions with humpback and gray whales. Interactions with humpback whales off the CA coast are likely to exceed 1 percent of PBR (PBR = 1.9). At least 14 large whales were documented entangled in this gear type from 2000–2005.

Response: NMFS is aware of interactions between humpback and gray whales and pot and trap gear. The 2005 Pacific SAR indicates that there were six Eastern North Pacific humpback whales observed killed or injured between 1999 and 2003 attributed to unidentified fisheries. This results in a mean annual take of more than 1.2 humpback whales per year, which is greater than 1 percent of this stock's PBR of 2.3. Based upon available data from the California Marine Mammal Stranding Network Database, which is currently being reviewed and updated, five humpbacks were observed entangled in pot or trap gear between 1999 and 2003. Thus NMFS has initiated a review of the trap/pot fisheries to determine whether recategorization of the CA lobster, prawn, shrimp, rock crab, fish pot fishery or the WA/OR/CA crab pot fishery is appropriate. At this time, NMFS has insufficient information on the spatial and temporal distribution on these various fisheries to determine which fisheries may be interacting with marine mammals, particularly humpback whales. Stranding reports from the stranding network are not necessarily a reliable identifier of fishing gear types as it is difficult to distinguish different pot and trap gears from surface observations of line and floats. Therefore, NMFS will work with the States of California, Oregon, and Washington to characterize the state and Federal fisheries that utilize these gear types, and review observed marine mammal entanglement from stranding reports and limited data from observer programs, to determine which pot and trap fisheries are most likely to interact with marine mammals. NMFS will also consider if the current fishery descriptions should be adjusted to more accurately reflect spatial and temporal differences in the various pot and trap gear fisheries, the regulatory authority for the fisheries, and the likelihood of

interactions with marine mammals. NMFS will work with the states and the Pacific Fisheries Management Council during this process and make recommendations on fishery recategorizations once sufficient information has been collected and analyzed.

Comment 19: One commenter recommended NMFS observe the category III CA halibut bottom trawl fishery and reevaluate classification once reliable information on interactions with marine mammals becomes available. This fishery is similar to the WA/OR/CA groundfish trawl fishery, also Category III, which is known to interact with several marine mammal species.

Response: NMFS is planning to place observers on the CA halibut bottom trawl fishery beginning in 2007. Because this fishery has not been previously observed, NMFS reviewed the bottom trawl groundfish observer data and classified the CA halibut bottom trawl fishery as a Category III fishery based upon the level of interactions with marine mammals and by analogy to the WA/OR/CA groundfish trawl fishery based upon fishing methods and gear used. As of 2006, the State of California requires a license for vessels participating in the previously open-access CA halibut bottom trawl fishery. Thus NMFS will be able to deploy observers in this fleet starting in January 2007. Once the data are collected and analyzed, NMFS will re-evaluate the CA halibut bottom trawl fishery to determine if recategorization on the LOF is appropriate.

Comment 20: One commenter recommended NMFS reclassify the category I HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery as Category II, given the lack of evidence of geographic isolation or genetic distinction among "stocklet" populations of false killer whales in the U.S. Exclusive Economic Zone (EEZ) and false killer whales on the high seas, and given the genetic evidence of central and eastern Pacific stock overlap. Genetic samples taken by NMFS observers indicate substantial mixing and genetic overlap between central and eastern Pacific stocks. Therefore, false killer whales that interact with the Hawaii-based longline fisheries are not clearly identifiable as part of the HI EEZ or central Pacific stock. It is inappropriate to charge all mortalities or serious injuries by HI-based longline fisheries against a HI EEZ stock when it is clear that some genetic samples of the injured or killed whales cannot be tracked to a genetically distinct HI population.

The commenter also noted errors and uncertainties in the false killer whale SARs, which underestimate false killer whale abundance and overestimate the seriousness of the HI longline fishery interactions with this species. NMFS improperly divides the central Pacific false killer whale stock into two stocklets, artificially reducing the abundance numbers against which HI longline fishery interactions are considered.

NMFS should also: (1) base final SAR and LOF decisions on a single, combined central Pacific stock of false killer whales across the HI and Palmyra Atoll EEZs and the central Pacific; (2) recognize the size of this single false killer whale stock is greater than the sum of the estimated populations of "stocklets" in the HI and Palmyra Atoll EEZs (i.e. ≤ 1813 animals); (3) derive values for minimum false killer whale population estimates and PBR levels based on the combined population numbers in the HI and Palmyra Atoll EEZs and the central Pacific; and (4) apportion mean annual take estimates attributable to the HI-based longline fisheries between a central and eastern false killer whale stock consistent with ongoing tissue sampling. This approach would result in an overall PBR for the single stock as 10.1 (2.4 for the HI EEZ + 7.7 for the Palmyra Atoll EEZ). With these changes HI-based longline fisheries would be well below 50 percent of PBR, qualifying the fishery for reclassification as a Category II. Also, a Category II classification would not affect the observer program requirements, which are a consequence of Endangered Species Act (ESA) consultation requirements.

Response: Genetic analyses of tissue samples collected within the Eastern North Pacific (ENP) indicate restricted gene flow between false killer whales sampled near the main Hawaiian Islands and false killer whales sampled in all other regions of the ENP (Chivers et al., 2006). False killer whales sampled at Palmyra Atoll appear more closely related to animals sampled in the waters of the pelagic ENP, Panama, and Mexico (Chivers et al., 2006). Thus, false killer whales occurring near Palmyra Atoll may be part of a larger stock covering a broad geographic area within the central and eastern North Pacific.

Since 2003, observers of the Hawaii-based longline fishery have also been collecting tissue samples of incidentally caught cetaceans for genetic analysis whenever possible. Four false killer whale samples, two collected outside the Hawaiian EEZ and two collected more than 100 nautical miles from the main Hawaiian Islands, were

determined to have ENP-like haplotypes. This suggests that false killer whales within the Hawaiian EEZ belong to two stocks, with a boundary somewhere within the Hawaiian EEZ. Efforts are currently underway to obtain and analyze additional tissue samples of false killer whales for further studies of population structure in the North Pacific Ocean.

Therefore, for the MMPA SARs, there are currently two Pacific Island Region management stocks. One includes animals found within the U.S. EEZ of the Hawaiian Islands, the other includes false killer whales found with the U.S. EEZ of Palmyra Atoll. Estimates of abundance, PBR levels, and status determinations are analyzed separately. Abundance estimates are based upon established scientific methods have been peer-reviewed and accepted by the Pacific SRG. The marine mammal stock assessment process under the MMPA was specifically designed to allow for levels of uncertainty similar to those observed for false killer whales.

Furthermore, NMFS has previously responded to a similar comment in our List of Fisheries for 2004 (69 FR 48407, August 10, 2004). In our Response to Comment 17 (69 FR 48413), NMFS stated: "The Hawaiian stock of false killer whales is considered a strategic stock under the MMPA because fishery related mortality and serious injury exceeds the PBR level for this stock (see 16 U.S.C. 1362(19)). Genetic analysis of samples from false killer whales in the North Pacific Ocean indicates population structure, but geographic boundaries of the various populations cannot yet be identified. However, the evidence for reproductive isolation and strong genetic differentiation of individuals sampled around Hawaii from individuals sampled in the ETP (Eastern Tropical Pacific) is solid. Furthermore, NMFS' current mortality and serious injury estimates are based only on takes within the U.S. EEZ and compared to PBR levels derived from abundance estimates for waters within the U.S. EEZ. In addition, even if the actual boundaries of the Hawaiian stock of false killer whales extended beyond the EEZ, the strategic status of the stock would not be changed. NMFS' guidelines for preparing marine mammal stock assessment reports contain specific instructions for calculating PBR of trans-boundary stocks. (The guidelines are available in electronic form at <http://nmml.afsc.noaa.gov/library/gammsrep/gammsrep.htm>). In cases such as false killer whales in the Hawaiian EEZ, where the stock could extend into international waters, the PBR would be

based on the abundance of animals within the EEZ. This guideline was established to prevent underestimating the effects of mortality and serious injury incidental to U.S. fisheries in international waters where unknown levels of additional human-caused mortality and serious injury (e.g., incidental to foreign fisheries in the same waters) may also be affecting the stock. NMFS does, however, plan to try to obtain additional genetic samples from a broader geographic range to help define stock boundaries.”

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

Comment 21: Two commenters supported reclassification of the mid-Atlantic mid-water trawl fishery from category I to category II and supported findings that this fishery does not pose a serious risk or contribute to the mortality or serious injury of common dolphins, Western North Atlantic (WNA) stock, and long- and short-finned pilot whales, WNA stock. One commenter encouraged NMFS to maintain adequate observer coverage to provide robust estimates of mortality and serious injury, particularly to inform the Atlantic Trawl Gear Take Reduction Team (ATGTTRT).

Response: Based on a recommendation made by the ATGTTRT (September 2006), NMFS re-evaluated the classification of the mid-Atlantic mid-water trawl fishery as a Category I fishery on the LOF. After conducting a tier analysis, NMFS determined that reclassification as a Category II fishery is warranted.

It should be noted that the MMPA establishes a requirement that the level of incidental mortality and serious injury of marine mammals be reduced to insignificant levels approaching a zero rate, commonly referred to as the Zero Mortality Rate Goal (ZMRG). NMFS has established a threshold level for mortality and serious injury to meet the insignificance threshold requirement. NMFS has defined the insignificance threshold as 10 percent of the PBR level for a stock of marine mammals (69 FR 43338, July 20, 2004). Since the mid-Atlantic mid-water trawl fishery is a Category II fishery and the annual mortality and serious injury level is above the insignificance threshold, it remains subject to future TRPs developed by the ATGTTRT.

NMFS will continue to allocate observer coverage to the maximum extent possible to meet MMPA requirements. NMFS will also try to make the best use of available resources by using existing research programs, programs operated by states or other

authorities, or alternative programs where statistically reliable information can be obtained.

Comment 22: One commenter requested further evidence of additional species being targeted with trap/pot gear in the mid-Atlantic region. It is unclear from the text in the proposed rule (71 FR 70339, December 4, 2006) which species are being added to the list of target species in the Atlantic mixed species trap/pot fishery.

Response: Clarification on which targeted species are being included in the expansion of species associated with the Atlantic mixed species trap/pot fishery can be found in the proposed 2007 LOF (71 FR 70346, December 4, 2006). 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 including but not 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) (71 FR 70346, December 4, 2006).

Evidence for this decision can be found in the Draft Environmental Impact Statement (DEIS) for Amending the Large Whale Take Reduction Plan (ALWTRP): Broad-Based Gear Modifications (February 2005), chapter 4 titled “Affected Environment”. This chapter includes the reasoning for why the addition of these fisheries to the Atlantic mixed species trap/pot gear fishery is warranted.

Comment 23: NMFS used “anecdotal” data to help make a category determination for the Gulf of Maine Atlantic herring purse seine fishery (71 FR 70347, December 4, 2006). NMFS should present the objective criteria used to evaluate the legitimacy of anecdotal data and how such use satisfies the requirements of the Data Quality Act.

Response: In the 2007 proposed LOF, NMFS proposed to remove the Gulf of Maine/Bay of Fundy stock of harbor porpoises from the list of species or stocks incidentally killed or seriously injured in the Gulf of Maine Atlantic herring purse seine fishery. The

rationale for the removal of the harbor porpoise from this list comes from the most recent SAR (2005) which highlights the most recent 5 years of data (from 1999–2003) as well as anecdotal or historical information, as records of interaction. According to the SAR, there is currently no evidence indicating that harbor porpoises are killed or seriously injured in the Gulf of Maine Atlantic herring purse seine fishery (71 FR 70347, December 4, 2006). The removal of harbor porpoises from the list of species or stocks incidentally killed or injured has not resulted in a change in the category determination for the Gulf of Maine herring purse seine fishery, which is currently classified as a Category III fishery.

In order for the agency to determine which species or stocks are included as incidentally killed or seriously injured in a fishery, NMFS reviews the marine mammal incidental serious injury and mortality information presented in the most recent SARs for commercial fishing operations. Historical and/or anecdotal information is presented in the SARs to inform readers about past interactions and takes not observed through the fishery observer program. This information is not factored into the incidental take information that is collected through observer data. SARs are based on the best scientific information available at the time of preparation. The information contained in the SARs is reviewed by regional SRGs who review the science that informs the SARs and 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 (71 FR 70342, December 4, 2006).

Information evaluated by NMFS that is disseminated to the public is required to comply with the Information Quality Act. The information used to classify fisheries for the 2007 LOF has undergone a predissemination review and is consistent with Information Quality Act requirements and NOAA guidelines. In the predissemination review, NMFS explains how the contents of the 2007 LOF meet the standards for utility, integrity, and objectivity established in the Information Quality Act and NOAA guidelines. The information in the 2007 LOF meets the standards for utility because it provides current, updated information on marine mammal

abundance and serious injury and mortality rates that is beneficial or serviceable to the public and affected fisheries. The information in the 2007 LOF is provided in a publicly accessible and broadly available document, published in the **Federal Register** and available through paper and electronic media, in which the updated information is an improvement over previously available information. The contents of the 2007 LOF meet the standards for integrity because the 2007 LOF adheres to the standards set out in the Computer Security Act and the Government Information Security Reform Act for electronic information disseminated by NOAA. The information in the 2007 LOF also meets the standards for objectivity. The LOF is categorized as a natural resource plan for purposes of Information Quality Act compliance, an information product that is prescribed by law and has content, structure, and public review processes based upon published standards. The 2007 LOF meets the standards for objectivity because it is published in compliance with the requirements of the MMPA, National Environmental Policy Act, Endangered Species Act, Coastal Zone Management Act, Administrative Procedures Act, Paperwork Reduction Act, and Executive Orders 13132 and 12866. The 2007 LOF is supported by the best available information, which has been reviewed by independent technically qualified individuals (i.e., SRG members) to ensure that the information is valid, complete, unbiased, and relevant. The peer review process of evaluating the SARs through the SRG allows the agency to maximize the objectivity and utility of the information the SARs promote.

Comment 24: One commenter supported the removal of superscript ⁽¹⁾ from bottlenose dolphin (WNA) and minke whale (Canadian east coast) under the mid-Atlantic gillnet fishery.

Response: The superscript ⁽¹⁾ next to the offshore bottlenose dolphins and minke whale stocks be removed under the mid-Atlantic gillnet fishery. The superscript ⁽¹⁾ was defined to denote if a stock was responsible for a current fishery's classification (71 FR 70347, December 4, 2006). The tier analysis conducted in 1996 that drove classification of the mid-Atlantic gillnet fishery from category III to category II focused on the incidental mortality and serious injury for harbor porpoise, coastal bottlenose dolphin, and humpback whales (60 FR 67081, December 28, 1995). For reclassification to a category I fishery, the tier analysis was based on 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, the superscript ⁽¹⁾ has been removed.

Comment 25: Two commenters viewed the category I Mid-Atlantic gillnet fishery as too broad in classification. The definition encompasses a large range of mesh sizes, areas, and gear deployments (sink and anchored gillnet, drift net, stab net, etc). This fishery should be stratified, perhaps by mesh size or target species. Stratification would allow for more precise estimation of marine mammal interactions by gear type and species targeted.

One commenter specifically recommended separating the bluefish and croaker portions from the generic mid-Atlantic gillnet fishery and redesignating each as either Category II or III. These fisheries have developed into two separate and distinct directed fisheries that are proven to pose little or no threat to marine mammals. The commenter reiterated a previous request that NMFS perform a separate Tier Analysis for both the bluefish and croaker portions of the mid-Atlantic gillnet fishery.

Response: NMFS acknowledges the information provided by the commenters on the potential for subdivisions within this fishery. Typically NMFS has bundled different targeted species into groups based on similar fishery characteristics unless there is information on marine mammal interaction rates or fishery operation to warrant a separate listing (see response to comment 4). Based on the best available (peer reviewed) information, NMFS does not find it appropriate to subdivide the bluefish and/or croaker mid-Atlantic gillnet fisheries at this time. The information currently available on the composition and distribution of the mid-Atlantic gillnet fishery and its incidental take levels is insufficient to identify distinct subcomponents of this fishery based on mesh size, area, or type of gear deployment. NMFS will investigate whether or not evidence exists to separate the bluefish and croaker portions of the mid-Atlantic gillnet fishery based on the criteria addressed above. If a reclassification is warranted, NMFS will propose these changes in a future LOF.

Comment 26: One commenter supported the addition of the mid-Atlantic flynet fishery as a Category II and encouraged NMFS to place observers aboard vessels in this fishery

to obtain the necessary information to assess the frequency of interactions.

Response: The mid-Atlantic flynet fishery has been observed opportunistically out of Wanchese, NC. During observed trips, no marine mammal takes were observed. Since this is a Category II fishery, NMFS may place observers in the fishery to further assess the frequency of marine mammal interactions; however, initiation of observer coverage is dependent on resources. NMFS also notes that self-reporting of injuries and mortalities of marine mammals by fishers is required by the MMPA. For this purpose, NMFS developed the MMAP Mortality/Injury Report Form, which is available at: http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reportin_form.pdf

Comment 27: One commenter requested further information and description of the specific gear types used to list the mid-Atlantic flynet fishery as a category II by analogy with other category II bottom trawl fisheries.

Response: The flynet fishery was listed as a Category II fishery because of its similarities to other Category II bottom trawl fisheries in terms of gear configuration, seasons and areas fished, and target species. As described in the proposed rule, flynets are high profile trawls similar to bottom otter trawls, except that they fish just off the bottom, rather than on the bottom. Fishermen use flynets to target summer flounder, croaker, and weakfish in waters off North Carolina from October through April. The flynet fishery is analogous to the Category II mid-Atlantic bottom trawl fishery, which, as defined in the LOF, includes any bottom trawl gear targeting a wide range of species, including, but not limited to, monkfish, summer flounder (fluke), winter flounder, silver hake (whiting), spiny dogfish, smooth dogfish, scup, black sea bass, bluefish, and croaker. This fishery operates year-round from Cape Cod, MA to Cape Hatteras, NC. Because of the similarities between these two fisheries, they present a similar risk of serious injury and mortality to marine mammals; therefore, the mid-Atlantic flynet fishery warrants a Category II classification.

Comment 28: One commenter stated that several fisheries in the Gulf of Mexico are known to injure and kill marine mammals, particularly bottlenose dolphins. The commenter raised concern in previous letters from 2003, 2004, 2005, and 2006, about the uncertainties of interactions with Gulf of Mexico fisheries (in particular the Gulf of Mexico blue crab trap/pot fishery and the Gulf of Mexico menhaden purse seine fishery) and the

unreliable information about bottlenose dolphin stock structure in the Gulf of Mexico. Since there is no evidence that research on bottlenose dolphin stock structure will take place in the near future, NMFS should expand its efforts to collect reliable information on interaction rates of marine mammals incidental to Gulf of Mexico fisheries, with priority given to an observer program for the Gulf of Mexico blue crab/trap pot fishery and the Gulf of Mexico menhaden purse seine fishery.

Response: Investigating bottlenose dolphin stock structure in the Gulf of Mexico is a high priority for NMFS, and efforts to update abundance estimates are underway. For northern Gulf of Mexico coastal stocks, aerial surveys began in January 2007 for the northern and eastern stocks from the mouth of the Mississippi River Delta to Key West, Florida. At least two abundance estimates per year are planned for the Bays, Sounds, and Estuarine stocks for the northern Gulf of Mexico. Additionally, a ship survey that will include the northern Gulf of Mexico continental shelf stock is being planned for the summer of 2007.

More information is needed on interactions rates with marine mammals in the Gulf of Mexico menhaden purse seine fishery. NMFS recently elevated this fishery to Category II based on documented serious injury and mortality to bottlenose dolphins. Because this is a Category II fishery, NMFS may place observers in the fishery to better assess the frequency of marine mammal interactions. While this fishery is a high priority for observer coverage, initiation of observer coverage is dependent on resources.

NMFS will continue to monitor blue crab fishing effort in the Gulf of Mexico and evaluate bottlenose dolphin strandings for evidence of trap/pot-related fishery interactions to determine the need for future reclassification of the fishery. NMFS has made efforts to train stranding responders in assessing and better documenting human interactions, and will continue efforts to work with the Gulf of Mexico Marine Fisheries Commission on outreach and derelict crab trap removals to reduce the risk of trap/pot interactions with marine mammals.

Comment 29: Two commenters recommended NMFS elevate the Gulf of Mexico blue crab trap/pot fishery to Category II based on the level of bottlenose dolphin mortality and serious injury obtained from available stranding data. The commenters also recommended NMFS elevate the Gulf of Mexico menhaden purse seine fishery to Category I. One commenter previously

commented on the classification of these fisheries and the need for an observer program to obtain more reliable information about bottlenose stock structure and interactions with fisheries in the Gulf of Mexico in letters from 2003, 2004, 2005, and 2006.

Response: More information is needed on interaction rates with marine mammals in the Gulf of Mexico menhaden purse seine fishery, as well as an increased understanding of stock structure of bottlenose dolphins in this area. NMFS recently elevated this fishery to a Category II based on documented serious injury and mortality to bottlenose dolphins, thus, NMFS may place observers in the fishery to better assess the frequency of marine mammal interactions. At this time, NMFS believes that more information is needed prior to considering elevating this fishery to Category I.

Comment 30: One commenter recommended that NMFS elevate the Gulf of Mexico gillnet fishery to Category I.

Response: At this time, there is no evidence to support a Category I classification for the Gulf of Mexico gillnet fishery. This fishery is currently listed as a Category II based on analysis of bottlenose dolphin stranding data. NMFS will continue to monitor fishing effort and evaluate bottlenose dolphin strandings for evidence of gillnet-related fishery interactions in the Gulf of Mexico to determine the need for future reclassification of this fishery. As with other Gulf of Mexico fisheries interacting with bottlenose dolphins, this fishery is a high priority for observer coverage, but initiation of coverage is dependent on resources.

Comment 31: One commenter recommended NMFS elevate the Caribbean gillnet fishery to Category I because it is known to injure or kill Antillean manatees, a highly endangered species. Therefore, any mortality or serious injury results in levels above 50 percent of PBR.

Response: NMFS discussed this comment with the U.S. Fish and Wildlife Service (USFWS), the agency with responsibility for the Antillean manatee stock of the West Indian Manatee. The USFWS is unsure of the source of information used by the commenter to support the statement that the Caribbean gillnet fishery is "known to injure or kill Antillean manatees". The commenter may have referenced the USFWS SAR for the Antillean stock of the West Indian Manatee. This SAR expresses concern for the status of the Antillean manatee as it relates to local fisheries. This SAR was written in 1995

and was reflective of the best available information present at that time. The USFWS has not updated this SAR since it was originally written. Pursuant to publication of the USFWS' forthcoming "Five-year Status Review of the West Indian Manatee" in 2007, which indicates that the status of manatees within this region is improving, the USFWS plans to update and revise the SAR for this stock. The revised SAR will incorporate the best currently available information and should address concerns that may be expressed regarding the impact of this fishery on the Antillean manatee.

The USFWS reviewed its records pertaining to the Antillean manatee within its range in Puerto Rico and the U.S. Virgin Islands. The latest mortality information from the region indicates that no mortalities or injuries from a historical fishery for manatees have been observed since 1995. These records also document a single manatee death attributed to an incidental entanglement in a gillnet over the same period of time. Therefore, elevation of the Caribbean gillnet fishery is not warranted at this time based on the low level of fisheries-related interactions over the past 12 years, combined with recent information suggesting that the status of manatees within this region is improving.

Summary of Changes to the LOF for 2007

The following summarizes changes to the LOF for 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

The "AK Cook Inlet salmon set gillnet fishery" is elevated

from Category III to Category II.

Addition of Fisheries to the LOF

The "WA, OR sardine purse seine fishery" is added to the LOF as a Category III fishery.

The "CA halibut bottom trawl fishery" is added to the LOF as a Category III fishery.

The "CA tuna purse seine fishery" is added to the LOF as a Category II fishery.

The “AK Cook Inlet salmon purse seine fishery” is added to the LOF as a Category II fishery.

The “AK Kodiak salmon purse seine fishery” is added to the LOF as a Category II fishery.

Removal of Fisheries from the LOF

The “CA sardine purse seine fishery” is removed from the LOF.

The “CA herring purse seine fishery” is removed from the LOF.

Fishery Name and Organizational Changes and Clarifications

The definition of superscript ⁽¹⁾ in “Table 1- List of Fisheries Commercial Fisheries in the Pacific Ocean” is modified from “...¹...greater than 1 percent, but less than 50 percent of the stock’s PBR” to read “...¹...greater than 1 percent of the stock’s PBR.”

The “Hawaii gillnet fishery” is renamed the “Hawaii inshore gillnet fishery”.

The “Hawaii purse seine fishery” is renamed the “Hawaii inshore purse seine fishery”.

The “CA yellowtail, barracuda, white seabass, and tuna drift gillnet (mesh size >3.5 inches and <14 inches) fishery” is renamed the “CA yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 inches and <14 inches) fishery”.

The “CA anchovy, mackerel, tuna purse seine fishery” and the “CA sardine purse seine fishery” are reorganized by switching the sardine and tuna portions of the fisheries. The end result is the “CA anchovy, mackerel, sardine purse seine fishery” and the “CA tuna purse seine fishery”.

Number of Vessels/Persons

The estimated number of participants in the “Commonwealth of Northern Mariana Islands tuna troll fishery” is updated to 88.

The estimated number of participants in the “Guam tuna troll fishery” is updated to 401.

The estimated number of participants in the “American Samoa longline fishery” is updated to 60.

The estimated number of participants in the “Guam bottomfish fishery” is updated to 200.

The estimated number of participants in the “HI Main Hawaiian Islands, Northwestern Hawaiian Islands deepsea bottomfish fishery” is updated 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 Pāhānaumoku kea 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. These 8 permittees are authorized to continue fishing in the Monument until June 15, 2011.

List of Species That are Incidentally Killed or Injured

The CA/OR/WA stocks of Baird’s beaked whale, Cuvier’s beaked whale, Mesoplodont beaked whale, pygmy sperm whale, and striped dolphin, the CA/OR/WA offshore stock of bottlenose dolphin, the Eastern North Pacific offshore stock of killer whale, the San Miguel Island stock of northern fur seal, and the Eastern U.S. stock of Steller sea lion are removed from the list of marine mammal species and stocks incidentally killed or injured by the “CA/OR swordfish/thresher shark drift gillnet fishery”. Also, the humpback whale stock from the list of marine mammal species and stocks incidentally injured or killed is changed from CA/OR/WA-Mexico to Eastern North Pacific.

The Eastern North Pacific stocks of humpback whale and gray whale, and the CA stock of harbor seal are added to the list of marine mammal species and stocks incidentally killed or injured in the “CA lobster, prawn, shrimp, rock crab, fish pot fishery”.

The Eastern North Pacific stock of humpback whale is added to the list of marine mammal species and stocks incidentally killed or injured in the “WA, OR, CA crab pot fishery”.

Technical Corrections

The proposed LOF for 2007 contained multiple errors in Table 1, “List of Fisheries Commercial Fisheries in the Pacific Ocean”, due to technical difficulties in merging the proposed 2007 LOF document between computers for printing in the **Federal Register**. These errors have been corrected in this final rule. Errors corrected in Table 1, in addition to general formatting errors, include:

Addition of the “AK Cook Inlet salmon purse seine fishery” as Category II. The text of the proposed rule proposed to add this fishery, but the addition was not reflected in Table 1.

Correction to the number of participants in the “American Samoa tuna troll fishery” from >50 to <50. The 2007 LOF did not propose to change the number of participants in this fishery; therefore, the change in the table was incorrect.

Addition of the South Central Alaska stock of sea otters to the list of marine mammal species or stocks incidentally

killed or injured in the “AK Prince William Sound salmon drift gillnet fishery”. The deletion of this stock from Table 1 was incorrect. This stock remains a stock that is incidentally killed or injured in this fishery.

Deletion of common dolphin, stock unknown, from the list of marine mammal species or stocks incidentally killed or injured in the “CA tuna purse seine fishery”. There are no documented takes of any marine mammal species or stocks in this fishery.

Correction to the name change of the “CA anchovy, mackerel, sardine purse seine fishery”. This change was discussed in the text of the proposed rule but was not reflected in Table 1.

Correction of the number of participants in the “CA anchovy, mackerel, sardine purse seine fishery”. Table 1 should read 100 participants, not 110 participants.

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

The “Mid-Atlantic mid-water trawl (including pair trawl) fishery” is recategorized from Category I to Category II.

Addition of Fisheries to the LOF

The “Mid-Atlantic flynet fishery” is added to the LOF as a Category II.

Fishery Name and Organizational Changes and Clarifications

The definition of superscript ⁽¹⁾ in Table 2, “List of Fisheries Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean” is modified from “...¹...greater than 1 percent, but less than 50 percent of the stocks PBR” to read “...¹...greater than 1 percent of the stock’s PBR.”

The definition of the “Southeastern U.S. Atlantic shark gillnet fishery” is clarified to include fishermen using gillnets set in a sink, stab, set, strike, or drift fashion to target sharks.

The definition of the “Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery” is clarified to include fishermen using pelagic longlines to target or land dolphin and wahoo.

The language defining the “Northeast sink gillnet fishery”, the “Northeast anchored float gillnet fishery”, and the “Northeast drift gillnet fishery” is changed 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...".

The list of target species associated with the "Northeast sink gillnet fishery" is expanded 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), spiny dogfish, monkfish, shad, skate and mackerel.

The list of target species associated with the "Northeast anchored float gillnet fishery" is expanded to include, but not be limited to: shad, herring, mackerel and menhaden.

The list of target species associated with the "Northeast drift gillnet fishery" is expanded to include, but not be limited to: shad, herring, mackerel and menhaden.

The list of target species associated with the "Mid-Atlantic gillnet fishery" is expanded 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, spot, and skate. Spot and skate were inadvertently deleted from the list of targets species in the proposed 2007 LOF. Spot and skate are targets species in this fishery and are added to the list of target species in the final 2007 LOF.

The type of gear associated with the "Mid-Atlantic gillnet fishery" is expanded to include gillnets set in a sink, stab, set, strike, or drift fashion, and any residual large pelagic driftnet effort in the mid-Atlantic.

The language defining the "Mid-Atlantic gillnet fishery" is changed 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...".

NMFS clarifies in this final rule that the trap/pot effort targeting stone crab off Georgia is part of the Category II "Atlantic Mixed Species Trap/Pot Fishery", which includes all trap/pot operations for species other than American lobster and blue crab from the Maine/Canada border through the waters east of the fishery management demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105). After the comment period for

the proposed 2007 LOF closed, NMFS became aware of emerging pot fishery for stone crab operating in an area off Georgia not previously known to sustain a directed stone crab fishery. Stone crab pot fishing off Georgia is not considered part of the Category III "Southeastern US Atlantic, Gulf of Mexico Stone Crab Trap/Pot Fishery" because that fishery is tied to the Gulf of Mexico Stone Crab FMP, which only includes south Atlantic waters as far north as Miami. Therefore, NMFS clarifies that the list of target species associated with the "Atlantic mixed species trap/pot fishery" is expanded 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), and stone crab.

Number of Vessels/Persons

The number of participants in the "Southeastern U.S. Atlantic shark gillnet fishery" is updated to 30.

The number of participants in the "Mid-Atlantic gillnet fishery" is updated to >670.

List of Species That are Incidentally Killed or Injured

The superscript (1) is removed from the Western North Atlantic stocks of common dolphins, long-finned pilot whales, and short-finned pilot whales under the "Mid-Atlantic mid-water trawl (including pair trawl) fishery" in Table 2.

The Western North Atlantic stock of Northern bottlenose whales is added to the list of species and stocks incidentally killed or injured in the "Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery".

The Gulf of Maine/Bay of Fundy stock of harbor porpoise is removed from the list of species or stocks incidentally killed or injured in the "Mid-Atlantic haul/beach seine fishery".

The Gulf of Maine/Bay of Fundy stock of harbor porpoise is removed from the list of species or stocks incidentally killed or injured in the "Gulf of Maine Atlantic herring purse seine fishery".

The superscript (1) is removed from the Western North Atlantic offshore stock of bottlenose dolphin and the Canadian east coast stock of minke whale under the "Mid-Atlantic gillnet fishery" in Table 2.

To correct a typographical error, the superscript (1) is removed from the Western North Atlantic stock of harp seals under the

"Northeast bottom trawl fishery" in Table 2.

Technical Corrections

The proposed LOF for 2007 contained multiple formatting errors and one substantive error in Table 2, "List of Fisheries Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean", due to technical difficulties in merging the proposed 2007 LOF document between computers for printing in the **Federal Register**. These errors have been corrected in Table 2 of this final rule. The substantive error corrected removed the superscript (1) from the Western North Atlantic stock of harp seal from the "Northeast bottom trawl fishery", which was discussed in the text of the proposed 2007 LOF but was not reflected in Table 2 of the proposed rule. The superscript (1) has been removed from Table 2 in this final rule.

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 breeding Sea 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:		
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

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Cook Inlet salmon 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 Sea Otter, South Central AK Steller sea lion, Western U.S. ¹
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 Cook Inlet salmon purse seine	82	Humpback whale, Central North Pacific ¹
AK Kodiak salmon purse seine	370	Humpback whale, Central North Pacific ¹
CA anchovy, mackerel, sardine purse seine	100	Bottlenose dolphin, CA/OR/WA offshore ¹ California sea lion, U.S. Harbor seal, CA

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
CA squid purse seine	65	Common dolphin, unknown Short-finned pilot whale, CA/OR/WA ¹
CA tuna purse seine ²		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
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

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

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

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
WA, OR 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.
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.

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 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
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

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
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:		
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

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 handpick	37	None documented
HI lobster diving	19	None documented
HI squidding, spear	91	None documented
WA, CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
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 ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Category I		
GILLNET FISHERIES:		
Mid-Atlantic gillnet	>670	Bottlenose dolphin, WNA coastal ¹ Bottlenose dolphin, WNA offshore Common dolphin, WNA Gray seal, WNA Harbor porpoise, GME/BF 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

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

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

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Northeast mid-water trawl (including pair trawl)	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 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
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

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, 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
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:		

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

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
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:		
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 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 process integrated with existing state and Federal permitting processes). Additionally, fishers may be subject to a Take Reduction Plan (TRP) 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 these 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 final rule will affect approximately 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 TRP, economic analyses of the effects of that plan will be summarized in subsequent rulemaking actions.

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

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

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

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

This final rule will not affect species listed as threatened or endangered

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

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

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

References

Angliss, R.P., and D.P. DeMaster. 1998. Differentiating Serious and Non-serious Injury of Marine Mammals Taken Incidental to Commercial Fishing Operations: Report of the Serious Injury Workshop 1-2 April 1997, Silver Spring, Maryland. NOAA Technical Memorandum NMFS-OPR-13.

Chivers, S. J., Baird, R.W., McSweeney, D.J., Webster, D., Hedrick, N.M. and Salinas, J.C. 2006. Genetic variation and evidence for population structure in eastern North Pacific false killer whales (*Pseudorca crassidens*). Submitted- Canadian Journal of Zoology.

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50 CFR Part 635

[I.D. 032107B]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the daily Highly Migratory Species (HMS) Angling category retention limits for Atlantic bluefin tuna (BFT) should be adjusted to maximize the usefulness of the information obtained from catches for biological sampling. Vessels permitted in the HMS Angling and HMS Charter/Headboat categories are eligible to land BFT under the HMS Angling category quota. Therefore, NMFS adjusts the daily BFT retention limits for the HMS Angling category quota to allow landing of school BFT in North Carolina during the three-week period from March 24, 2007, through April 15, 2007, as specified in the **SUPPLEMENTARY INFORMATION** section of this document. This action is intended to provide scientific data that would enhance future recreational fishing opportunities for the HMS Angling and HMS Charter/Headboat categories, while minimizing the risk of an overharvest of the HMS Angling category BFT quota.

DATES: Effective from 12:01 a.m., March 24, 2007, through 11:59 p.m., April 15, 2007.

FOR FURTHER INFORMATION CONTACT: Dianne Stephan, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

The 2006 BFT fishing year began on June 1, 2006, and ends May 31, 2007. The final initial 2006 BFT specifications and effort controls were published on May 30, 2006 (71 FR 30619). These final specifications established retention limits for school BFT (measuring 27 inches (69 cm) to less than 47 inches (119 cm)) for the HMS Angling and HMS Charter/Headboat categories in accordance with the following: (1) International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendation limiting the U.S. catch of school BFT to no more than 8 percent of total U.S. domestic landings calculated as a four-year average; (2) the Consolidated HMS Fishery Management Plan (FMP) (October 2, 2006, 71 FR 58058); and (3) the HMS FMP implementing regulations at 50 CFR 635.27.

The following is a letter from Dr. William Hogarth in response to letters received from four elected officials from the State of California regarding Council action on exempted fishing permits for highly migratory species.

The same response letter, except for the salutation, was provided to each of the elected officials:

Barbara Boxer, US Senator;

Lynn Woolsey, Member, US House of Representatives;

Carole Migden, California State Senator;

Jared Huffman, Assemblymember, California Legislature.

APR 30 2007



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

The Honorable Barbara Boxer
United States Senate
Washington, D.C. 20510-0505

RECEIVED

MAY 07 2007

PFMC

Dear Senator Boxer:

Thank you for your letter regarding two proposed exempted fishing permits (EFP) targeting swordfish off the West Coast. These EFPs are pending before the Pacific Fishery Management Council and NOAA's National Marine Fisheries Service (NMFS).

One EFP would allow an exploratory drift gillnet fishery in the current August 15–November 15 closed area, and the other would allow an exploratory shallow-set longline fishery inside the U.S. exclusive economic zone. Final decisions on issuance or denial of the EFP applications will only be made after completion of all applicable environmental reviews.

The purpose of the proposed drift gillnet EFP is to provide information regarding the adequacy of the current time/area closure to protect leatherback turtles. This closure was implemented through regulations resulting from a 2000 biological opinion under the Endangered Species Act (ESA) that used a worst-case scenario to estimate future takes of leatherback turtles. Since 2001, NMFS has received new information regarding leatherback distribution, behavior, and migratory pathways off the U.S. West Coast suggesting that the original time/area closure may have been excessive.

The purpose of the proposed shallow-set longline EFP is to conduct preliminary exploratory fishing by one vessel to gather information on the economic viability and environmental effects of using longline gear. NMFS' research indicates that, using the newest technologies, this gear type is highly selective, resulting in very little bycatch.

NMFS will evaluate the applications to determine whether new scientific information can be gathered without risking significant impacts on other living marine resources. This information is critical for NMFS in its goal to support fishery techniques that provide economic opportunity while minimizing impacts on the marine ecosystem. Should either of these EFPs go forward, they would be closely scrutinized with 100 percent observer coverage.

Decisions have not been made about the final outcome of these EFPs, and the opportunity for public comment will continue. Your concerns will be considered during the decision-making process.

If you have any further questions, please contact Eric Webster, Director of NOAA's Office of Legislative Affairs, at (202) 482-4981.

Sincerely,

William T. Hogarth

William T. Hogarth, Ph.D.



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THE ASSISTANT ADMINISTRATOR
FOR FISHERIES



BARBARA BOXER
CALIFORNIACOMMITTEES:
COMMERCE, SCIENCE
AND TRANSPORTATION
ENVIRONMENT
AND PUBLIC WORKS
FOREIGN RELATIONS

United States Senate

HART SENATE OFFICE BUILDING
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(202) 224-3553
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April 2, 2007

Dr. William Hogarth, Director
NOAA National Marine Fisheries Service
1315 East West Highway, SSMC3
Silver Spring, MD 20910Mr. Donald McIsaac, Executive Director
Mr. Donald K. Hansen, Chair
Pacific Fisheries Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220

04-03-07 P01:00 IN

Dear Dr. Hogarth, Mr. McIsaac, Mr. Hansen and members of the Council:

I am writing to express my strong concerns about two proposed exempted fishing permits (EFP) before you. One EFP is for an expansion of the current drift-gillnet fishery into the Leatherback Conservation Area. The second EFP is for a new long line fishery for swordfish within the Exclusive Economic Zone (EEZ). I urge you to deny both of these EFP proposals in their current form.

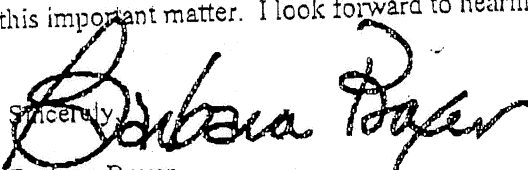
Only six years ago, the Leatherback Conservation Area was established off portions of the California and Oregon coasts to protect critical feeding grounds for the endangered Pacific leatherback sea turtle. There were 91,000 nesting females in 1980. Fewer than 2,300 nesting female Pacific leatherback sea turtles remain. Drift-gillnet fishing was determined to have a significant impact on this sea turtle population. Although drift-gillnet technology has recently improved in reducing marine mammal deaths, there still remains a problem in bycatch of the endangered sea turtle. Before the drift gillnet fishery is allowed to expand into the Leatherback Conservation Area, I recommend the fishery be required to undergo a legitimate experiment to prove sea turtle bycatch is no longer a problem. I oppose expansion of the drift-gillnet fishery until such a solution can be demonstrated.

California has historically never had a long line swordfish fishery -- I do not see the need to open a long line fishery now. Long line fishing creates significant bycatch and overfishing problems.

Approving the EFP proposals before you would put the endangered Pacific leatherback sea turtle at grave risk of extinction and place other threatened and endangered marine species in serious jeopardy. I urge you to deny these EFPs and continue the important marine protections in place today. Current conservation measures have been very effective at protecting threatened and endangered marine species. It is crucial that we honor these protections and sustain our coastline's rich biodiversity.

Thank you for your attention to this important matter. I look forward to hearing from you regarding your decisions.

Sincerely,


Barbara Boxer
United States Senator
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SUITE 7-600
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(916) 448-27872500 TULARE STREET
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FRESNO, CA 93721
(559) 497-5109600 "B" STREET
SUITE 2240
SAN DIEGO, CA 92101
(619) 239-3884201 NORTH "E" STREET
SUITE 210
SAN BERNARDINO, CA 92401
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LYNN WOOLSEY
5TH DISTRICT, CALIFORNIA

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EDUCATION AND THE WORKFORCE

RANKING MEMBER, SUBCOMMITTEE ON
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SUBCOMMITTEE ON WORKFORCE PROTECTIONS

SCIENCE

SUBCOMMITTEE ON ENERGY

WEB PAGE AND E-MAIL:

<http://www.woolsey.house.gov>**Congress of the United States****House of Representatives**

Washington, DC 20515-0506

March 30, 2007

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Dr. William Hogarth, Director
NOAA Fisheries Service
1315 East West Highway, SSMC3
Silver Spring, MD 20910

Dear Director Hogarth:

I understand that the National Marine Fisheries Service (NMFS) and its regional advisory council, the Pacific Fisheries Management Council (PFMC), are moving forward with plans to develop a pelagic swordfish longline fishery within the Exclusive Economic Zone (EEZ) of California, Oregon, and Washington and a drift gillnet fishery within the current Leatherback Turtle Conservation Zone.

I urge the NMFS and PFMC to consider the following major points and reject the new longline and drift gillnet fishery proposals:

- Pelagic longline and drift gillnet fishing are highly indiscriminate fishing methods, which have devastating effects on the marine environment. Drift gillnet fishing was banned on the high seas by the United Nations in 1991.
- Longline and drift gillnet fishing have high rates of bycatch, including critically endangered leatherback sea turtle, whales, dolphins, seals, sea birds, sharks, other endangered sea turtles, and commercially valuable fishing stock.

It is not in the best interest of healthy coastal ecosystems to take a step backward and allow pelagic longline fishing and drift gillnet fishing that continues to have serious bycatch problems. Considering the declining state of the ocean's fisheries, as outlined in both the Pews and Oceans Commission reports, we must be extremely careful that we do not reintroduce indiscriminate fishing methods. For these reasons I oppose the development of a pelagic longline fishery within the west coast's EEZ. Considering drift gill net unsolved problems with sea turtle bycatch, I also do not support reintroduction of drift gillnets within the Leatherback Conservation Area.

Thank you for your consideration. I look forward to your response.



Lynn Woolsey

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SENATOR.MIGDEN@SEN.CA.GOV

California State Senate

SENATOR
CAROLE MIGDEN
THIRD SENATE DISTRICT

MAJORITY WHIP



COMMITTEES
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CHAIR

NATURAL RESOURCES
AND WATER

JOINT COMMITTEE ON
LEGISLATIVE BUDGET

SELECT COMMITTEE ON
CALIFORNIA'S WINE
INDUSTRY

SELECT COMMITTEE ON
CALIFORNIA'S HORSE
RACING

SELECT COMMITTEE ON
CALIFORNIA INFRASTRUCTURE

March 5, 2007

Dr. William Hogarth, Director
NOAA Fisheries Service
1315 East West Highway, SSMC3
Silver Spring, MD 20910

Mr. Donald McIsaac, Executive Director
Mr. Donald K. Hansen, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220

Dear Dr. Hogarth, Mr. McIsaac, Mr. Hansen, and members of the Council:

As the state Senator for the 3rd District in California, my district includes the Pacific coastline from just south of Bodega Bay to the Golden Gate. It is my duty to safeguard and protect the natural beauty of the Northern California coastline and the creatures that live there. I'm writing to you today because I'm concerned about the proposed exempted fishing permits (EFP) to expand the swordfish/thresher shark drift-gillnet fishery into current time/area closures and to develop a pelagic swordfish longline fishery within the Exclusive Economic Zone (EEZ). I urge you to deny both EFPs.

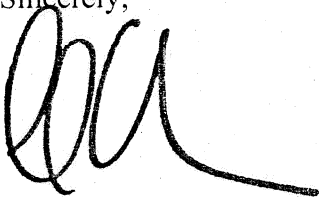
There is ample evidence that issuing these EFPs could have a huge impact on the endangered leatherback sea turtle and other marine wildlife. As you know, the California coast has been closed to swordfish pelagic longlining for 30 years and portions of the California and Oregon coastline have been closed to drift-gillnet fishing since 2001 to protect leatherback sea turtles which seasonally inhabit the waters off our coast. The Pacific leatherback sea turtle population has already plummeted from 91,000 in 1980 to currently fewer than 2,300 annual nesting females. If you allow pelagic longline swordfishing and drift-gillnet fishing back into these protected areas, it will place the critically endangered leatherback at greater risk of extinction and other protected and endangered marine species at risk.

03-12-07 A10:12 IN

Before we allow an animal species to be lost forever, I hope you'll continue to enforce the important conservation measures that have been hard-fought and are effective in protecting highly vulnerable species. The existing closures comply with domestic and international conservation mandates and are consistent with the best available scientific information. Both drift-gillnet fishing and longline swordfishing are highly indiscriminate fishing methods that have devastating effects on the marine environment. For this reason, the United Nations banned drift-gillnet fishing on the high seas in 1991, and California has had a ban on swordfish pelagic longlining for 30 years. We should do nothing less than honor these protections.

Please do your part to protect our coastline and deny these EFPs. Thank you for your consideration, and please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carole Migden', with a long, sweeping horizontal line extending to the right.

Carole Migden
State Senator, 3rd District

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Assembly California Legislature



JARED HUFFMAN
ASSEMBLYMEMBER, SIXTH DISTRICT

COMMITTEES
CHAIR, ENVIRONMENTAL
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UTILITIES AND COMMERCE
WATER, PARKS AND WILDLIFE

March 15, 2007

Dr. William Hogarth, Director
NOAA Fisheries Service
1315 East West Highway, SSMC3
Silver Spring, MD 20910

03-20-07 A11:04 IN

Mr. Donald McIsaac, Executive Director
Mr. Donald K. Hansen, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220

Dear Dr. Hogarth, Mr. McIsaac, Mr. Hansen, and members of the Council:

As the state Assemblymember for the 6th District in California, my district includes hundreds of miles of coastline. It is my duty to safeguard and protect the natural beauty of the Northern California coastline and the creatures that live there. I'm writing to you today because I'm concerned about the proposed exempted fishing permits (EFP) to expand the swordfish/thresher shark drift-gillnet fishery into current time/area closures and to develop a pelagic swordfish longline fishery within the Exclusive Economic Zone (EEZ). I urge you to deny both EFPs.

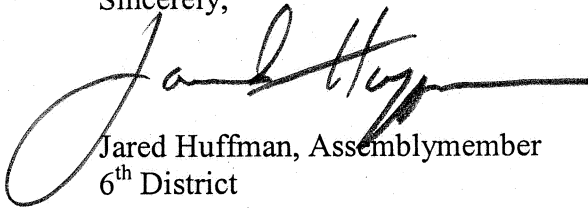
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Before we allow an animal species to be lost forever, I hope you'll continue to enforce the important conservation measures that have been hard-fought and are effective in protecting highly vulnerable species. The existing closures comply with domestic and international conservation mandates and are consistent with the best available scientific information. Both drift-gillnet fishing and longline sword fishing are highly indiscriminate fishing methods that have devastating effects on the marine environment. For this reason, the United Nations banned drift-gillnet fishing on the high seas in 1991, and California has had a ban on swordfish pelagic longlining for 30 years. We should do nothing less than honor these protections.

Please do your part to protect our coastline and deny these EFPs. Thank you for your consideration, and please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared Huffman", with a long horizontal flourish extending to the right.

Jared Huffman, Assemblymember
6th District

JH/dmg



Federal Register

**Thursday,
May 24, 2007**

Part II

Department of Commerce

**National Oceanic and Atmospheric
Administration**

15 CFR Part 922

50 CFR Part 660

**Establishment of Marine Reserves and a
Marine Conservation Area Within the
Channel Islands National Marine
Sanctuary; Final Rule**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

50 CFR Part 660

[Docket No. 0612242956–7123–01]

RIN 0648–AT18

Establishment of Marine Reserves and a Marine Conservation Area Within the Channel Islands National Marine Sanctuary

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS) and National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: On August 11, 2006 NOAA issued a notice of proposed rulemaking to establish a network of marine zones within the state and federal waters of the Channel Islands National Marine Sanctuary (CINMS or Sanctuary). State waters in the Sanctuary extend from the shoreline of the islands to approximately 3 nautical miles from shore. Federal waters of the Sanctuary extend from the offshore extent of state waters to the Sanctuary's outer boundary. In this final rule, NOAA is issuing final regulations for the federal-waters portion of the Sanctuary. NOAA has decided to defer a final decision and seeking additional comment on the state-waters portion of the Sanctuary pending action by the State of California to extend the boundaries of several existing state-waters zones to the three mile state-federal-waters boundary.

Marine zones are discrete areas that have special regulations differing from the regulations that apply throughout or above the Sanctuary as a whole. The purpose of these zones within the federal waters of the Sanctuary is to further the protection of Sanctuary biodiversity and complement an existing network established by the State of California in October 2002, and implemented in April 2003, under its authorities. Two types of zones are being established by this action: Marine reserves and marine conservation areas. All extractive activities (e.g., removal of any Sanctuary resource) and injury to Sanctuary resources are prohibited in all marine reserves. Commercial and recreational lobster fishing and recreational fishing for pelagic species are allowed within the marine

conservation area, while all other extraction and injury are prohibited. This action establishes approximately 110.5 square nautical miles of marine reserves and 1.7 square nautical miles of marine conservation area in the federal waters of the Sanctuary. As part of this action, NOAA is also modifying the terms of designation for the Sanctuary, which were originally published on October 2, 1980 (45 FR 65198), to allow for the regulation of extractive activities, including fishing, in marine reserves and marine conservation areas, and a slight modification to the outer boundary of the CINMS.

DATES: Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1434(b), the revised terms of designation and this final rule shall take effect and become final after the close of a review period of 45 days of continuous session of Congress, beginning on the day on which this document is published in the **Federal Register**. Announcement of the effective date of this final rule will be published in the **Federal Register** at a later date.

Public comments on the state-waters portion of this rulemaking must be received by July 23, 2007.

ADDRESSES: Copies of the final environmental impact statement, regulatory impact review, and final regulatory flexibility analyses may be obtained from NOAA's Channel Islands National Marine Sanctuary Web site at <http://channelislands.noaa.gov/> or by writing to Sean Hastings, Resource Protection Coordinator, Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara, CA 93109; e-mail: Sean.Hastings@noaa.gov.

You may submit comments on the state-waters portion of this rulemaking by any of the following methods:

- **E-mail:** CINMSReserves.FEIS@noaa.gov. Include in the subject line the following document identifier: Marine reserves in CINMS.

- **Federal e-Rulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** Sean Hastings, Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara, CA 93109.

FOR FURTHER INFORMATION CONTACT: Sean Hastings, (805) 884–1472; e-mail: Sean.Hastings@noaa.gov.

SUPPLEMENTARY INFORMATION:**I. Background****A. Channel Islands National Marine Sanctuary**

The CINMS area is approximately 1,113 square nautical miles adjacent to

the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (collectively the Channel Islands), extending seaward to a distance of approximately 6 nautical miles. NOAA designated the CINMS in 1980 to protect the area's rich and diverse range of marine life and habitats, unique and productive oceanographic processes and ecosystems, and culturally significant resources (see 45 FR 65198). The Sanctuary was designated pursuant to NOAA's authority under the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*). There are significant human uses in the Sanctuary as well, including commercial and recreational fishing, marine wildlife viewing, boating and other recreational activities, research and monitoring activities, numerous educational activities, and maritime shipping.

The waters surrounding California's Channel Islands represent a globally unique and diverse assemblage of habitats and species. This region is a subset of the larger ecosystem of the Southern California Bight, an area bounded by Point Conception in the north and Punta Banda, Mexico in the south. In the area between Santa Barbara Island in the south and San Miguel Island in the northwest, the colder waters of the Oregonian oceanic province in the north converge and mix with the warmer waters of the Californian oceanic province. Each of these two provinces has unique oceanic conditions and species assemblages, which in turn are parts of distinct biogeographic regions. The mixing of these two provinces in the vicinity of the Channel Islands creates a transition zone within the island chain. Upwelling and ocean currents in the area create a nutrient rich environment that supports high species and habitat diversity.

In the Southern California Bight, marine resources have declined under pressure from a variety of factors, including commercial and recreational fishing, changes in oceanographic conditions associated with El Niño and other large-scale oceanographic cycles, introduction of disease, and increased levels of pollutants. The urbanization of southern California has significantly increased the number of people visiting the coastal zone. The burgeoning coastal population has greatly increased the influx of human, industrial, and agricultural wastes to California coastal waters. Population growth has also increased human demands on the ocean, including commercial and recreational fishing, wildlife viewing

and other activities. New technologies have increased the yield of sport and commercial fisheries. Many former natural refuges for targeted species, such as submarine canyons, submerged pinnacles, deep waters, and waters distant from harbors, can now be accessed due to advancements in fishing technology and increased fishing effort.

The significant changes in ecological conditions resulting from the array of human activities in the Channel Islands region are just beginning to be understood. For example, many kelp beds have converted to urchin barrens, where urchins and coralline algae have replaced kelp as the dominant feature. Deep canyon and rock areas that were formerly rich rockfishing grounds have significantly reduced populations of larger rockfish such as cowcod and bocaccio.

In the Southern California Bight, commercial and recreational fisheries target more than 100 fish species and more than 20 invertebrate species. Targeted species have exhibited high variability in landings from year to year (e.g., squid) and in several cases have declined to the point that the fishery has had to be shut down (e.g., abalone). Many targeted species are considered overfished and one previously targeted species (white abalone) is listed as endangered. Excessive bycatch has caused declines of some non-targeted species. The removal of species that play key ecological roles, such as predatory fish, has altered ecosystem structure. Some types of fishing gear have caused temporary or permanent damage to marine habitats. The combination of direct take, bycatch, indirect effects, and habitat damage and destruction has contributed to a negative transformation of the marine environment around the Channel Islands.

B. Marine Zoning

For over twenty years, NOAA has used marine zoning as a tool in specific national marine sanctuaries to address a wide array of resource protection and user conflict issues. Marine zones are discrete areas within or above a national marine sanctuary that have special regulations that differ from the regulations that apply throughout or above the sanctuary as a whole. For example, marine zones are used to regulate the use of motorized personal watercraft in the Monterey Bay National Marine Sanctuary. Marine zones, including areas where all extraction is prohibited, have also been established in the Florida Keys National Marine Sanctuary to provide for varying levels of resource protection.

NOAA has used zoning within the CINMS since its original designation in 1980. For example, the CINMS regulations prohibit:

1. Cargo vessels from coming within 1 nautical mile of any island in the CINMS;
2. disturbance of marine mammals or seabirds by flying aircraft below 1,000 feet within 1 nautical mile of any island within the CINMS; and
3. construction upon or drilling into the seabed within 2 nautical miles of any island in the CINMS.

In addition to NOAA, other federal and state agencies have also established marine zones wholly or partially within the Sanctuary (e.g., California Department of Fish and Game, National Park Service). In 1978, commercial and recreational fishing was prohibited by the State of California in one small marine protected area of the Channel Islands, the Anacapa Island Ecological Reserve. The International Maritime Organization has designated a voluntary vessel traffic separation scheme to guide large vessel traffic running through the Santa Barbara Channel. The National Park Service (NPS) has established several zoned areas within the Channel Islands National Park for different public uses, principally to protect seabird colonies and marine mammal haul outs. More recently, the NPS is instituting a new zoning approach to managing park lands, coasts, and adjacent waters.

Due to historic lows in the stocks of certain rockfish (e.g., cowcod and bocaccio), in 2001 the Pacific Fishery Management Council (PFMC) took emergency action and established large bottom closures to rebuild these stocks. NOAA implemented the Cowcod Conservation Area regulations on January 1, 2001 (66 FR 2338) and the Rockfish Conservation Area emergency regulations on September 13, 2002 (67 FR 57973). The Cowcod Conservation Area and the California Rockfish Conservation Area partially overlay Sanctuary waters. Finally, in 2002, the California Fish and Game Commission (FGC) authorized the establishment of marine reserves and marine conservation areas within the state waters of the Sanctuary that prohibit or limit the take of living, geological or cultural marine resources.

C. Marine Reserves

The number of documented successful examples of no-take marine reserves is growing, providing substantial evidence that rapid increases in biomass, biodiversity, abundance and size of organisms usually result from their designation. Increased

biodiversity, abundance, and habitat quality within closed areas generally improve the resiliency and ability of marine ecosystems to adapt to ongoing human-caused or natural disturbance, such as climate shifts, major storm damage, and pollution.

The designation of marine reserves can also reinforce traditional fish management approaches to substantially reduce overall fishery impacts to the ecosystem. Traditional management, like controls on fishery catch and effort, may fail due to factors such as stock assessment errors, inadequate institutional frameworks, and uncertainty. Marine reserves can help to rebuild depleted populations, reduce bycatch and discards, and reduce known and as-yet-unknown ecosystem effects of fishing. In addition, marine reserves offer scientists and resource managers a controlled opportunity to study the influence of change on marine ecosystems in the absence of direct human disturbance.

D. Channel Islands Marine Reserves Process, Community Phase 1999–2001

The NMSA requires NOAA to periodically review the management plan and regulations for each national marine sanctuary and to revise them, as necessary, to fulfill the purposes and policies of the NMSA (16 U.S.C. 1434(e)). NOAA began the process to review the CINMS management plan and regulations in 1999. Through the scoping process, many members of the public voiced concern over the state of biodiversity in the CINMS and called for fully protected (i.e., no-take) zones to be established.

In 1998, the Commission received a recommendation from a local recreational fishing group to create marine reserves around the northern Channel Islands as a response to declining fish populations. In response to concerns about changes in the ecosystem and comments raised to the Commission and during the CINMS management plan scoping process, NOAA and the California Department of Fish and Game (CDFG) developed a Federal-state partnership to consider the establishment of marine reserves in the Sanctuary.

Since the marine reserves process is inherently complex, and is a stand-alone action that is programmatically independent of and severable from the more general suite of actions contemplated in the management plan review process, NOAA decided to separate the process to consider marine reserves from the larger CINMS management plan review process. The draft management plan and DEIS for the

management plan review were released for public comment on May 19, 2006 (71 FR 29148). NOAA also published a proposed rule to implement the management plan on May 19, 2006 (71 FR 29096). Please see <http://channelislands.noaa.gov> for more information.

The CINMS Advisory Council, a federal advisory board of local community representatives and federal, state and local government agency representatives, created a multi-stakeholder Marine Reserves Working Group (MRWG) to seek agreement on a recommendation regarding the potential establishment of marine reserves within the Sanctuary. The CINMS Advisory Council also designated a Science Advisory Panel of recognized experts and a NOAA-led Socio-economic Team to support the MRWG in its deliberations.

Extensive scientific, social, and economic data were collected in support of the marine reserves assessment process. From July 1999 to May 2001, the MRWG met monthly to receive, weigh, and integrate advice from technical advisors and the public. The MRWG reached consensus on a set of ground rules, a mission statement, a problem statement, a list of species of interest, and a comprehensive suite of implementation recommendations. The MRWG found that in order to protect, maintain, restore, and enhance living marine resources, it is necessary to develop new management strategies that encompass an ecosystem perspective and promote collaboration between competing interests. A set of goals were also agreed upon by the MRWG:

1. To protect representative and unique marine habitats, ecological processes, and populations of interest.
2. To maintain long-term socioeconomic viability while minimizing short-term socioeconomic losses to all users and dependent parties.
3. To achieve sustainable fisheries by integrating marine reserves into fisheries management.
4. To maintain areas for visitor, spiritual, and recreational opportunities which include cultural and ecological features and their associated values.
5. To foster stewardship of the marine environment by providing educational opportunities to increase awareness and encourage responsible use of resources.

The MRWG developed over 40 different designs for potential marine reserves and evaluated the ecological value and potential economic impact of each design. To do so, members of the MRWG contributed their own expertise to modify designs or generate

alternatives and utilized a geospatial tool, known as the Channel Islands Spatial Support and Analysis Tool (CI-SSAT). CI-SSAT provided opportunities for visualization, manipulation, and analysis of data for the purpose of designing marine reserves.

After months of deliberation, a consensus design could not be reached and the MRWG selected two designs to represent the diverse views of the group. These designs depict the best effort that each MRWG representative could propose. Ultimately, the CINMS Advisory Council provided the MRWG's two designs, as well as all of the supporting information developed during the process, including background scientific and economic information, to NOAA and the CDFG for consideration and action.

Based on this information and additional internal agency analysis, NOAA and the CDFG crafted a draft reserve network and sent it to the CINMS Advisory Council and the former MRWG, Science Panel and Socio-Economic Team members seeking further input. The draft reserve network was also published in local papers and on the CINMS Web site to solicit input from the general public. Several meetings were held with constituent groups, including the CINMS Advisory Council's Conservation Working Group, Fishing Working Group and Ports and Harbors Working Group, to discuss the draft network. Following this period of input, the CDFG and NOAA prepared a recommendation for establishing a network of marine reserves and marine conservation areas. The recommendation proposed a network of marine reserves and marine conservation areas in the same general locations as the MRWG Composite Map. The composite map was forwarded to the CINMS Advisory Council and represented two versions of a reserve and conservation area network, one version from consumptive interests and the other from non-consumptive interests. These two versions were overlaid on one map, and depicted a number of areas that the constituent groups agreed upon. This recommendation became the basis for the preferred alternative in the State's California Environmental Quality Act (CEQA) environmental review process.

E. Establishment of State Reserves in the CINMS, 2001 to 2003

Due to the fact that the proposed network spanned both state and federal waters, NOAA and the CDFG determined the implementation of the recommendation would need to be divided into a state phase and a federal

phase. State waters extend from the shore to a distance of three nautical miles. Federal waters extend beyond the limit of state waters to the extent of the exclusive economic zone, with the outer boundary of the CINMS at a distance of approximately six nautical miles from shore. The state phase was to be considered by the Commission under its authorities.

The CDFG completed an environmental review under the requirements of CEQA resulting in the publication of an environmental document. The draft environmental document (ED) was released for public comment on May 30, 2002. Comments were accepted for an extended period until September 1, 2002. The Commission and CDFG received 2,492 letters, e-mails and oral comments. Of this total, 2,445 were form letters that made identical comments.

The Commission certified the final ED on October 23, 2002. At this same meeting, the Commission approved the CDFG's preferred alternative. The CDFG published final regulations for its action in January 2003. As part of its implementation, the FGC acknowledged the need for NOAA to complete the network by extending the marine zones into the deeper and federal waters of the CINMS.

F. Federal Marine Reserves Process, 2003–2007

Following the publication of the CDFG's final regulations in 2003, NOAA's NMSP initiated the federal marine reserves process, and hosted scoping meetings with the general public, the CINMS Advisory Council, and PFMC. In 2004, the NMSP released a preliminary environmental document with a range of alternatives for public review. In 2005, the NMSP consulted with local, state, and federal agencies and the PFMC on possible amendments to the CINMS designation document pursuant to section 303(b)(2) of the NMSA (16 U.S.C. 1433(b)(2)). In addition, in 2005 the NMSP provided the PFMC with the opportunity to prepare draft NMSA fishing regulations pursuant to section 304(a)(5) of the NMSA (16 U.S.C. 1434(a)(5)) for the potential establishment of marine reserves and marine conservation areas.

In its response to NOAA's letter regarding draft NMSA fishing regulations, the PFMC stated its support for NOAA's goals and objectives for marine zones in the CINMS but recommended that NOAA issue fishing regulations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the relevant authorities of the states of

California, Oregon, and Washington rather than under the NMSA. To that end, and in accordance with advice from the NOAA Administrator in his October 19, 2005 letter to the PPMC, the PPMC recommended the Channel Islands marine zones in federal waters be designated as Essential Fish Habitat and Habitat Areas of Particular Concern with corresponding management measures to prohibit the use of bottom contact gear under Amendment 19 of the Groundfish Fishery Management Plan. To complete the process of addressing closure of the remaining aspect of the marine zones (i.e., in the water column) the PPMC stated its intent to pursue those closures through other fishery management plan authorities and complementary state laws.

NOAA reviewed the PPMC's recommendations and determined that they did not have the specificity or record to support the use of the MSA or state laws to establish limited take or no-take zones in the water column and thereby did not fulfill NOAA's goals and objectives for these marine zones in the CINMS. However, Amendment 19 to the Groundfish Fishery Management Plan implemented, in part, the proposed marine zones by prohibiting all bottom contact gear in the proposed zones. Accordingly, the NMSA regulations issued in this rule prohibit the take of resources from the zones not prohibited by the Amendment 19 regulations. Thus, along with the regulations implementing Amendment 19, the NMSA regulations establish comprehensive limited-take and no-take zones in the CINMS in a manner that fulfills NOAA's goals and objectives for these marine zones in the CINMS.

As stated in the summary, the purpose of these zones is to further the protection of Sanctuary biodiversity and complement an existing network established by the State of California in October 2002, and implemented in April, 2003, under its authorities. The goals of the zones are:

- To ensure the long-term protection of Sanctuary resources by restoring and enhancing the abundance, density, population age structure, and diversity of the natural biological communities.
- To protect, restore, and maintain functional and intact portions of natural habitats (including deeper water habitats), populations, and ecological processes in the Sanctuary.
- To provide, for research and education, undisturbed reference areas that include the full spectrum of habitats within the CINMS where local populations exhibit a more natural

abundance, density, diversity, and age structure.

- To set aside, for intrinsic and heritage value, representative habitats and natural biological communities.
- To complement the protection of CINMS resources and habitats afforded by the State of California's marine reserves and marine conservation areas.
- To create models of and incentives for ways to conserve and manage the resources of CINMS.

On August 11, 2006 NOAA issued a notice of proposed rulemaking (71 FR 46134) to prohibit the take of resources from the zones not prohibited by the Amendment 19 regulations. NOAA subsequently issued a correction to this notice on October 5, 2006 (71 FR 58767) to correct certain figures presented on the size of the Sanctuary.

Between August and October of 2006, NOAA received public comments and held two hearings on the proposed rule. Over 30,000 individuals submitted written comments and/or presented oral testimony on NOAA's proposal. 99% of these individuals supported the establishment of marine zones in some form, particularly Alternatives 1A and 2 as described in NOAA's DEIS. During the public comment period, the State of California also submitted comments on NOAA's proposal. In its October 2006 letter, the CDFG stated that it could only support Alternative 1C as described in NOAA's draft environmental impact statement (DEIS). Under Alternative 1C, NOAA would establish marine reserves only in federal waters. NOAA's preferred alternative in the DEIS, identified as Alternative 1A, would have established marine zones in both federal and state waters with federal regulations overlaying the entire network (i.e., from the outer boundary of the federal waters reserves to the shore of the Channel Islands). As indicated in the DEIS, Alternative 1C would leave gaps in protection between the offshore extent of some of the state waters marine zones established by the State of California in 2003 and the marine zones proposed by NOAA (refer to figure 1 for an illustration of these gaps).

On March 16, 2007, the California Coastal Commission (Coastal Commission) held a public meeting on NOAA's proposal pursuant to its authorities under section 307 of the Coastal Zone Management Act (16 U.S.C. 1456). See <http://www.coastal.ca.gov/meetings/mtg-mm7-3.html> for more information about this meeting. At that meeting, the Coastal Commission passed a motion as follows: "In the event NOAA elects not to implement Alternative 1a, NOAA will

implement Alternative 1c, with the following additional provisions: Until such time as the Resources Agency and the Fish and Game Commission designate the areas in between the existing State-designated MPAs and the 3 mile limit (i.e., the "gaps" between the existing state MPAs and the federal MPAs depicted in Alternative 1c [and shown on Exhibit 9]), or the Fish and Game Commission/DFG and NOAA enter into an interagency agreement that establishes MPA protection for these "gap" areas, NOAA will expand Alternative 1c to include in its MPA designation these "gaps" between the outer boundaries of the existing state MPAs and the state-federal waters boundary (3nm from shore)." At this meeting, the CDFG representative also stated that the FGC could close these gaps in protection using state laws by August 2007.

Based on the record, including comments received during the public comment period and the record of the Coastal Commission, NOAA has determined that there is sufficient information and rationale to establish marine zones in the federal waters of the Sanctuary (i.e., implement NOAA's Alternative 1C). With regard to state waters of the Sanctuary, NOAA has decided to defer action on establishing marine zones until the FGC has had an opportunity to close those gaps in a manner consistent with the Coastal Commission's motion and the CDFG representative's statement. The State of California has already begun this process by placing it on the agenda for a decision at the August 2007 meeting of the FGC. Also, the CDFG has begun preparing the necessary documentation to support the FGC's decision. NOAA is, therefore, leaving the record open with regard to a decision to establish marine zones in state waters of the Sanctuary, and will be accepting additional public comment on this specific issue.

NOAA will make a final decision with regard to its action in state waters in fall, 2007. If the FGC is able to take sufficient action before this time, NOAA proposes to take no further action under the NMSA. If the FGC is not able to take sufficient action before this time, NOAA would finalize regulations under the NMSA that would effectively close the gaps associated with alternative 1C by extending federal protections into state waters to meet the boundaries of the marine zones established by the FGC in 2003. In either case, NOAA will provide public notice of this action through issuance of a **Federal Register** document at the appropriate time.

II. Summary of Final Environmental Impact Statement and Record of Decision

NOAA prepared a draft environmental impact statement (DEIS) for the proposed rule to establish marine reserves and marine conservation areas within the Sanctuary (71 FR 46220; August 11, 2006). The DEIS was prepared in accordance with the NMSA and National Environmental Policy Act of 1969 (NEPA) requirements. The DEIS was distributed for public comments in early August 2006. The public comment period, which closed on October 10, 2006, yielded many comments on NOAA's proposed action and suggestions for improving the DEIS. NOAA has prepared a final environmental impact statement (FEIS) to address these comments and make appropriate changes to its environmental analysis. The FEIS contains a statement of the purpose and need for the project, description of proposed alternatives including the no action alternative, description of the affected environment, and evaluation and comparison of environmental consequences including cumulative impacts. The preferred alternative incorporates the network of marine reserves and marine conservation areas originally identified for the federal phase in the Commission's CEQA document.

NOAA's record of decision for this action, prepared pursuant to 40 CFR 1505.2, is set forth below:

Record of Decision

Introduction

Designated in 1980, the Channel Islands National Marine Sanctuary (CINMS or Sanctuary) consists of an area of approximately 1,113 square nautical miles (nmi²) off the southern coast of California. The Sanctuary boundary begins at the mean high water line and extends seaward to a distance of approximately six nautical miles (nmi) from the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (collectively the Islands). Located offshore from Santa Barbara and Ventura counties, the Sanctuary supports a rich and diverse range of marine life and habitats, unique and productive oceanographic processes and ecosystems, and culturally significant resources. More than 27 species of cetaceans (whales and dolphins) use the Sanctuary during at least part of the year. There are also 5 species of pinnipeds (seals and sea lions) that occur in the area. More than

60 species of birds feed in the sanctuary and more than 23 species of sharks occur here. In addition, a wealth of Chumash Native American artifacts as well as the remains of over 100 historic shipwrecks line the ocean floor of the Sanctuary.

The primary objective of the CINMS is to protect Sanctuary resources. In meeting this objective, NOAA is establishing federal marine zones in the CINMS to further the protection of Sanctuary biodiversity, and to complement the existing network of marine zones established by the State of California in October 2002 (and implemented under its authorities in April 2003). The regulations implementing this action add nine new federal marine zones to the Sanctuary (eight no-take marine reserves and one limited-take marine conservation area).

These zones total 110.5 nmi² as marine reserves and 1.7 nmi² as marine conservation areas. The area of the total network, including the existing state marine zones, is 214.1 nmi². All extractive activities (e.g., removal of any sanctuary resource) and injury to Sanctuary resources are prohibited in marine reserves. Lobster harvest and recreational fishing for pelagic finfish (with hook and line only) are allowed within the marine conservation area, while all other extraction or injury to Sanctuary resources is prohibited.

NOAA has prepared this record of decision (ROD) in accordance with regulations published by the Council on Environmental Quality (40 CFR 1505.2) implementing the National Environmental Policy Act (NEPA).

Decision

NOAA is issuing new regulations for the CINMS. These new regulations prohibit take of all Sanctuary resources in marine reserves and limit take of all Sanctuary resources in a marine conservation area.

Alternatives Considered

In its final environmental impact statement, NOAA considered three alternatives for this action: A no action (or status quo) alternative, Alternative 1, and Alternative 2.¹

No Action Alternative

The no action alternative would have maintained the status quo in the Sanctuary (i.e., no new marine zones would be designated). Under this alternative, the NMSP would not have

¹ In addition, NOAA and the State of California considered and analyzed dozens of other spatial designs. See section 3 of the FEIS for more information about the process used to develop the range of alternatives.

taken any new regulatory action under the NMSA. Existing Sanctuary regulations (e.g., no discharge) would continue to apply throughout the CINMS. Existing state marine reserves and marine conservation areas and existing state and federal management of commercial and recreational activities, including fishing, would remain in place.

Alternative 1

Under Alternative 1, the NMSP will establish a series of marine zones. The spatial extent of the overall marine zoning network alternative was developed by the CDFG and NMSP in 2001, based on the extensive work of the MRWG and its advisory panels, and is the original proposed project in the CDFG (2002). The portions of the marine zones within state waters were established by the FGC and CDFG in 2003.

Alternative 1 contained three sub-alternatives: 1A, 1B, and 1C. In Alternative 1A, the boundaries of the marine zones (and their corresponding NMSA regulations) completely overlay the existing state marine zones and terminate at the mean high water line of the northern Channel Islands. In Alternative 1B, the boundaries of the marine zones (and their corresponding NMSA regulations) abut the existing state marine zone boundaries, thereby including a small portion of state waters. In Alternative 1C, the boundaries of the proposed marine zones terminate at the boundary between state and federal waters (3 nmi from shore), thereby including no state waters. Alternative 1C was NOAA's preferred alternative.

Alternative 2

Alternative 2 is based on a larger network of marine reserves developed during the MRWG process with slight modifications to conform to the boundaries of the existing state marine reserves and conservation areas. Alternative 2 is the largest of the alternatives proposed, thereby increasing protection of various habitats and species of interest, as compared to Alternative 1A. When compared to the no-action alternative, Alternative 2 adds 11 new marine reserves and one new marine conservation area. Alternative 2 has a total of 276.9 nmi² as marine reserves and 12.1 nmi² as marine conservation areas for a total of 289.0 nmi². Alternative 2 would have had the same regulations as Alternative 1.

Environmentally Preferred Alternative

All alternatives, aside from the no action alternative, would result in

environmental benefits in the form of protection of sensitive marine habitats and species. Alternative 2 is the largest of the alternatives proposed and includes a network of existing state marine zones and new federal zones, and would increase protection of various habitats and species of interest, as compared to the sub-alternatives under Alternative 1. Therefore, this alternative is considered to be the environmentally preferred. It was not selected because Alternative 1 better met NOAA's purpose and need.

Mitigation Measures

Because the action would not result in any environmental harm, there are no specific mitigation measures needed to avoid, minimize, or compensate for environmental harm.

Decision Making Process

Collectively referred to as the "Channel Islands marine reserves process," the consideration of marine zones within the CINMS occurred in three distinct phases: (1) A community-based phase; (2) a State of California (State) regulatory phase; and (3) a federal regulatory phase. These three phases are described in detail in the Final Environmental Impact Statement for this action (see **ADDRESSES**).

In summary, the alternatives described evolved as a result of the Channel Islands marine reserves process. Comprehensive marine zoning network options were originally developed by NOAA and the CDFG following a comprehensive stakeholder process conducted from 1999 through 2002. In 2002, the FGC supported establishment of state marine zones in the state waters of the Sanctuary (0–3 nmi)².

Following the publication of the State's final regulations in 2003, NOAA hosted scoping meetings to consider the extension of the State's zones into deeper waters of the Sanctuary. In 2004, NOAA released a preliminary environmental document with a range of alternatives for public review. NOAA then consulted with local, state, and federal agencies and the Pacific Fishery Management Council (PFMC) on possible amendments to the CINMS designation document pursuant to section 303(b)(2) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1433(b)(2)). In addition, in 2005 NOAA provided the PFMC with the opportunity to prepare draft NMSA

fishing regulations pursuant to section 304(a)(5) of the NMSA (16 U.S.C. 1434(a)(5)) for the potential establishment of marine reserves and marine conservation areas.

The PFMC response to NOAA's letter regarding draft fishing regulations stated its support for NOAA's goals and objectives for marine zones in the CINMS, but recommended that, rather than utilizing the NMSA, NOAA issue fishing regulations under the Magnuson-Steven Fishery Conservation and Management Act (MSA) and the relevant authorities of the states of California, Oregon, and Washington. To that end, and in accordance with advice from the NOAA Administrator in his October 19, 2005 letter to the PFMC, the PFMC recommended the northern Channel Islands federal marine zones be designated as Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC) under Amendment 19 of the Groundfish Fishery Management Plan (FMP). The water column in the marine zones would be closed under other fishery management plan authorities and complementary state laws.

NOAA reviewed the PFMC's recommendations and determined that PFMC did not have the specificity or record to support the use of the MSA or state laws to establish limited take or no-take zones in the water column and thereby did not fulfill NOAA's goals and objectives for these marine zones in the CINMS. Amendment 19 to the Groundfish FMP implemented, in part, the proposed marine zones by prohibiting all bottom contact gear in those proposed zones. Accordingly, NOAA's NMSA regulations prohibit the take of resources from the zones not prohibited by the Amendment 19 regulations. Thus, along with the regulations implementing Amendment 19, the NMSA regulations establish comprehensive marine reserves and a marine conservation area in the federal waters part of the CINMS in a manner that fulfills NOAA's goals and objectives for the marine zones in the CINMS.

In August 2006, NOAA published proposed regulations for this action and released the related draft environmental impact statement (DEIS) for public review and comment. Between August and October of 2006, NOAA received public comment and held two hearings on the proposed rule and DEIS. Over 30,000 individuals submitted written comments and/or presented oral testimony on NOAA's proposal. Approximately 99% of these individuals supported the establishment of Alternative 1A or Alternative 2.

During the public comment period, the State of California also submitted comments on NOAA's proposal. In its October 2006 letter, the CDFG stated that it could only support Alternative 1C (NMSA regulations in federal waters only) as described in the DEIS. In subsequent consultations with State representatives and in a letter from the Secretary of Resources dated January 2, 2007, the State reiterated that it could only support Alternative 1C at this time. Under Alternative 1C, NOAA would establish marine reserves and a marine conservation area only in federal waters. NOAA's preferred alternative, identified as Alternative 1A in the DEIS, would have established marine zones in both federal and state waters with federal regulations overlaying the entire network (*i.e.*, from the outer boundary of the federal waters reserves to the mean high water line of the Channel Islands). As indicated in the DEIS, Alternative 1C leaves small gaps in protection between the offshore extent of some of the state waters marine zones established by the State of California in 2003 and the federal waters marine zones proposed by NOAA.

On March 16, 2007, the Coastal Commission held a public meeting on NOAA's consistency determination with California's Coastal Zone Management Plan under section 307 of the Coastal Zone Management Act (see <http://www.coastal.ca.gov/meetings/mtg-mm7-3.html>). At that meeting, the Coastal Commission passed a motion as follows:

*In the event NOAA elects not to implement Alternative 1a, NOAA will implement Alternative 1c, with the following additional provisions: Until such time as the Resources Agency and the Fish and Game Commission designate the areas in between the existing State-designated MPAs and the 3 mile limit (*i.e.*, the "gaps" between the existing state MPAs and the federal MPAs depicted in Alternative 1c [and shown on Exhibit 9]), or the Fish and Game Commission/DFG and NOAA enter into an interagency agreement that establishes MPA protection for these "gap" areas, NOAA will expand Alternative 1c to include in its MPA designation these "gaps" between the outer boundaries of the existing state MPAs and the State-federal waters boundary (3nm from shore).*

At this meeting, the CDFG representative also stated that the FGC could close these gaps in protection using state laws by August 2007.

Based on the record, including comments received during the public comment period and the record of the Coastal Commission, NOAA determined that at this time there is sufficient information and rationale to establish marine zones in the federal waters of the Sanctuary (*i.e.*, implement NOAA's alternative 1C). This Record of Decision

² Refer to the Environmental Impact Report prepared by the State of California for its 2002 action. This document is available for download on NOAA's CINMS Web site at <http://channelislands.noaa.gov/marineres/main.html>.

supports that determination and represents NOAA's final decision to implement the regulations in the federal waters of the Sanctuary associated with Alternative 1C.

With regard to state waters of the Sanctuary, NOAA has decided to defer action on establishing federal marine zones until the FGC has had an opportunity to close the gaps between the federal marine zones and the state marine zones in a manner consistent with the Coastal Commission's resolution and the CDFG representative's statement.³ The State of California has already begun this process by placing it on the agenda for a decision at the August 2007 meeting of the FGC. Also, the CDFG has begun preparing the necessary documentation to support the FGC's decision. If the FGC is able to take sufficient action in a timely manner, NOAA would take no further action under the NMSA. If the FGC is not able to take sufficient action in a timely manner, NOAA would issue regulations under the NMSA that would effectively close the gaps associated with Alternative 1C by extending federal protections into state waters to meet the boundaries of the marine zones established by the FGC in 2003. In that instance, a second record of decision for that subsequent action would be issued to finalize such action.

Conclusion

The new regulations identified above apply to all users of the Sanctuary. Based on socioeconomic information gathered by NOAA and identified in the FEIS, the socioeconomic impacts of these regulations can be characterized as:

- Having a small impact on existing consumptive activities (commercial fishing and consumptive recreational activities).
- Beneficial to non-consumptive recreational users. These increased benefits take the form of increases in diversity and abundance of wildlife for viewing and photography opportunities. Benefits may also be derived from the decrease in the density of users or in the reduction in conflicts with consumptive users.
- Beneficial to management, research, and education because relatively undisturbed areas (i.e., reference areas) will be available for comparison with areas outside the marine zones; and
- Beneficial for intrinsic and heritage purposes.

NOAA expects, therefore, that this rule will have no significant socioeconomic impacts and that the

implementation of marine zones in the CINMS will have beneficial ecological impacts on marine communities and habitats.

III. Revised Designation Document

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities subject to regulation by the Secretary to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. To implement this action, the CINMS Designation Document, originally published in the **Federal Register** on October 2, 1980 (45 FR 65198), is modified to read as follows (new text in bold and deleted text in brackets and italics):

Preamble

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92-532, (the Act) the waters surrounding the northern Channel Islands and Santa Barbara Island are hereby designated a Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecological community.

Article 1. Effect of Designation

Within the area designated as the Channel Islands National Marine Sanctuary (the Sanctuary), described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of this Designation lists those activities which may require regulation but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulation, and additional activities may be regulated only by amending Article 4.

Article 2. Description of the Area

The Sanctuary consists of an area of the waters off the coast of California, of approximately [1252.5] 1,128 square nautical miles (nmi) adjacent to the northern Channel Islands and Santa Barbara Island seaward to a distance of **approximately 6 nmi**. The precise boundaries are defined by regulation.

Article 3. Characteristics of the Area That Give It Particular Value

The Sanctuary is located in an area of upwelling and in a transition zone between the cold waters of the California Current and the warmer Southern California Countercurrent. Consequently, the Sanctuary contains an exceptionally rich and diverse biota, including 30 species of marine mammals and several endangered species of marine mammals and sea birds. The Sanctuary will provide recreational experiences and scientific research opportunities and generally will have special value as an ecological, recreational, and esthetic resource.

Article 4. Scope of Regulation

Section 1. Activities Subject to Regulation

In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of its marine features and the ecological, recreational, and esthetic value of the area:

- a. Hydrocarbon operations.
- b. Discharging or depositing any substance.
- c. Dredging or alteration of, or construction on, the seabed.
- d. Navigation of vessels except fishing vessels or vessels [travelling] traveling within a Vessel Traffic Separation Scheme or Port Access Route designated by the Coast Guard outside of 1 nmi from any island.
- e. Disturbing marine mammals or birds by overflights below 1000 feet.
- f. Removing or otherwise deliberately harming cultural or historical resources.
- g. Within a marine reserve, marine park, or marine conservation area, harvesting, removing, taking, injuring, destroying, possessing, collecting, moving, or causing the loss of any Sanctuary resource, including living or dead organisms or historical resources, or attempting any of these activities.
- h. Within a marine reserve, marine park, or marine conservation area, possessing fishing gear.

Section 2. Consistency With International Law

The regulations governing the activities listed in Section 1 of this article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law including treaties and international agreements to which the United States is signatory.

³ Closing the gaps would also be consistent with the public record supporting the 2002 decision of the California Fish and Game Commission to establish marine zones in the Sanctuary.

Section 3. Emergency Regulations

Where essential to prevent immediate, serious and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this article would be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1. Fishing

The regulation of fishing is not authorized under Article 4, except within portions of the Sanctuary designated as marine reserves, marine parks, or marine conservation areas established pursuant to the goals and objectives of the Sanctuary and within the scope of the State of California's Final Environmental Document "Marine Protected Areas in NOAA's Channel Islands National Marine Sanctuary" (California Department of Fish and Game, October 2002), certified by the California Fish and Game Commission. However, fishing vessels may be regulated with respect to discharges in accordance with Article 4, Section 1, paragraph (b) and aircraft conducting kelp bed surveys below 1000 feet can be regulated in accordance with Article 4, Section 1, paragraph (e). All regulatory programs pertaining to fishing, including particularly regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 et seq., shall remain in effect. All permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. Fishing as used in this article and in Article 4 includes kelp harvesting.

Section 2. Defense Activities

The regulation of those activities listed in Article 4 shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practicable.

Section 3. Other Programs

All applicable regulatory programs shall remain in effect and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. The Sanctuary regulations shall set forth any necessary certification procedures.

Article 6. Alterations to This Designation

This Designation can be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested federal and state agencies and the Pacific Regional Fishery Management Council, and approval by the President of the United States.

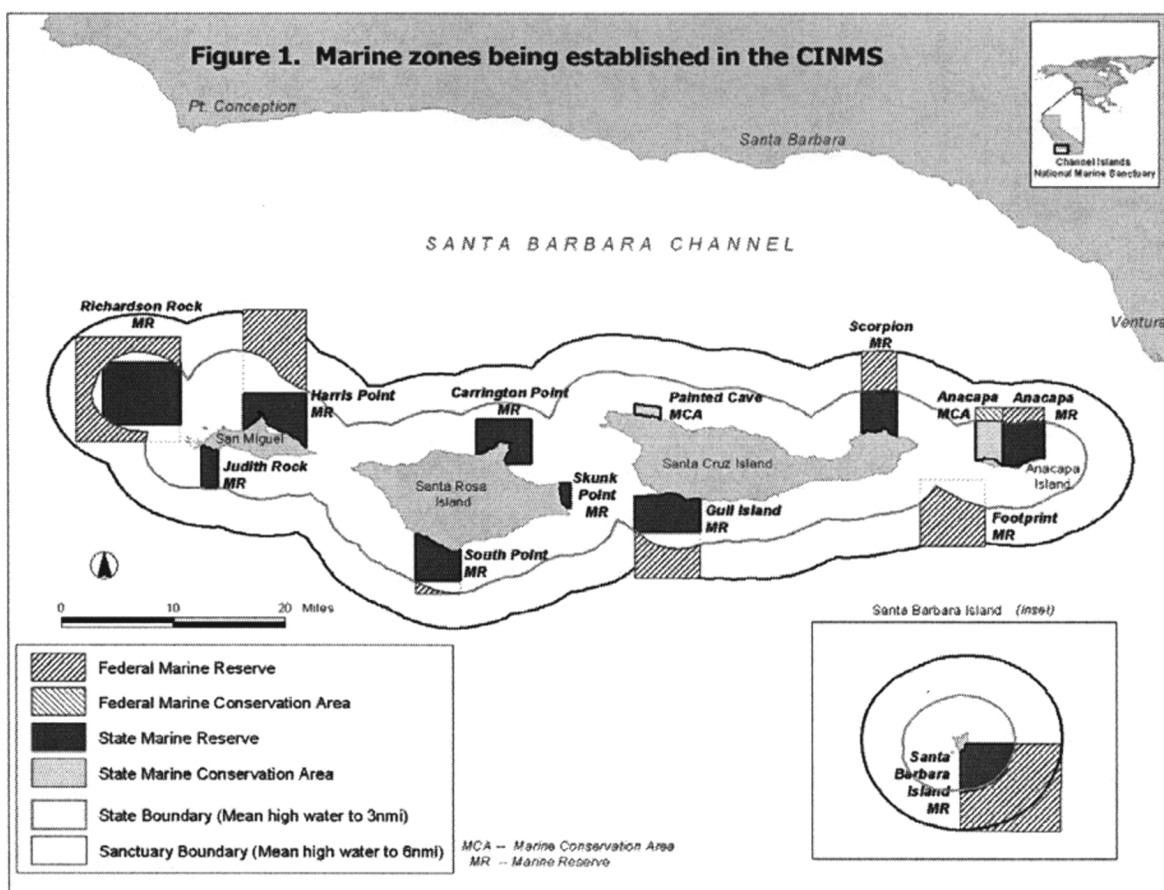
IV. Summary of Regulations

These final regulations implement NOAA's preferred alternative by establishing marine reserves and a marine conservation area within the federal waters of CINMS. The regulations define two new terms (*pelagic finfish* and *stowed and not available for immediate use*), prohibit all extractive activities and injury to Sanctuary resources within the marine reserves, and prohibit all extractive activities and injury to Sanctuary resources within the marine conservation area except recreational fishing for pelagic finfish and commercial and recreational lobster fishing (Anacapa Island Marine Conservation Area). These regulations also add two new appendices that list the boundary coordinates for the marine reserves and marine conservation area.

These regulations modify subpart G of the National Marine Sanctuary Program Regulations (15 CFR part 922), the regulations for the Channel Islands National Marine Sanctuary.

A. Establishment of Marine Reserves and Marine Conservation Areas

These regulations establish under the NMSA eight marine reserves and one marine conservation area within the CINMS. Refer to figure 1 for a map depicting the locations of the marine reserves and marine conservation area. The marine reserves are distributed throughout the CINMS and extend slightly beyond the current boundaries of the CINMS in four locations, increasing the geographic area of the Sanctuary by about 15 square nautical miles. This action increases the overall size of the Sanctuary from approximately 1,113 square nautical miles to approximately 1,128 square nautical miles, an approximately 15 square nautical mile increase. This small amount added allows the boundary of four of the marine reserves to be defined by straight lines projecting outside the current CINMS boundary, allowing for better enforcement of the marine reserves. The boundaries of the marine reserves and marine conservation area are consistent with the marine reserves and marine conservation areas established by the Commission in 2002 in state waters—essentially extending most of them into federal waters of the Sanctuary. NOAA is changing the number identifying the total area of the CINMS from approximately 1,252.5 square nautical miles to approximately 1,128 square nautical miles. This change is based on North American Datum of 1983 (NAD 83) and adjusts for technical corrections using updated technologies. The legal description of the CINMS is updated to reflect this change. This update does not constitute a change in the geographic area of the Sanctuary (other than the approximately 15 square nautical miles referred to above) but rather an improvement in the estimate of its size.



Under these final regulations, NOAA establishes two marine reserves in the area around San Miguel Island, one around Santa Rosa Island, two around Santa Cruz Island, two around Anacapa Island, and one around Santa Barbara Island. The marine conservation area is established off of Anacapa Island.

The total area designated marine reserves under these final regulations is 110.5 square nautical miles. The marine conservation area encompasses an additional 1.7 square nautical miles.

Based on the record, including comments received during the public comment period and the record of the Coastal Commission, NOAA has determined that there is sufficient information and rationale to establish marine zones in the federal waters of the Sanctuary (i.e., implement NOAA's Alternative 1C). With regard to state waters of the Sanctuary, NOAA has decided to defer action on establishing marine zones until the FGC has had an opportunity to close those gaps in a manner consistent with the Coastal Commission's motion and the CDFG representative's statement. The State of California has already begun this process by placing it on the agenda for a decision at the August 2007 meeting of the FGC. Also, the CDFG has begun

preparing the necessary documentation to support the FGC's decision. NOAA is, therefore, leaving the record open with regard to a decision to establish marine zones in state waters of the Sanctuary, and is requesting additional public comment on this specific issue.

B. Activities Prohibited Within the Marine Reserves

Under the final regulations, NOAA prohibits any harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including living or dead organisms or historical resources, or attempting to do so, within any of the marine reserves. The term "sanctuary resource" is broadly defined in the NMSP regulations at 15 CFR 922.3 and means any living or non-living resource that contributes to the conservation, recreational, ecological, historical, scientific, educational, or aesthetic value of the Sanctuary. For the CINMS, the term "Sanctuary resource" includes, for example, the seafloor and all animals and plants of the Sanctuary. It also includes historical resources (which, pursuant to 15 CFR 922.3, include cultural and archeological resources), such as shipwrecks and Native American remains. In addition, to

enhance compliance and aid in enforcement, these final regulations also prohibit possessing fishing gear and Sanctuary resources inside a marine reserve, except in certain circumstances. These final regulations allow possession of legally harvested fish stowed on a vessel at anchor in or transiting through a marine reserve and also allow the possession of stowed fishing gear, provided the gear is not available for immediate use.

These final regulations prohibit only those extractive activities within marine reserves that are not prohibited by 50 CFR part 660, the NOAA regulations that govern "Fisheries off West Coast States" (MSA regulations). Therefore, if an extractive activity is prohibited by MSA regulations, it is not prohibited by these final NMSA regulations. Conversely, all extractive activities not prohibited by MSA regulations are prohibited by these final NMSA regulations within marine reserves. In the future, if NOAA were to amend the MSA regulations to prohibit additional extractive activities within marine reserves, these NMSA regulations would correspondingly narrow in scope. If, for MSA purposes, NOAA were to amend the MSA regulations to allow additional extractive activities, these NMSA

regulations would correspondingly expand in scope to ensure all forms of extraction are prohibited within marine reserves. In either case, the MSA rulemaking making such change would provide the public with notice of the corresponding change in applicability of the NMSA regulation.

Regardless of the specific regulatory mechanism, the intended result of this final rule is for all extractive activities to be prohibited within the marine reserves.

C. Activities Prohibited Within the Marine Conservation Areas

These final regulations prohibit the same activities within the marine conservation area as within the marine reserves except that commercial and recreational lobster fishing and recreational fishing for pelagic finfish are allowed in the marine conservation area at Anacapa Island. Commercial fishing for pelagic finfish is prohibited within the marine conservation area.

Like the final regulations for marine reserves, the final regulations for the marine conservation area only prohibit activities that are not prohibited by applicable MSA regulations codified at 50 CFR part 660. Any changes to the applicable MSA regulations would result in a corresponding change in the applicability of the NMSA regulations, as discussed above.

D. Enforcement

The final regulations will be enforced by NOAA and other authorized agencies (e.g., the California Department of Fish and Game, United States Coast Guard, and National Park Service) in a coordinated and comprehensive way. Enforcement actions for an infraction will be prosecuted under the appropriate statutes or regulations governing that infraction. The result is that enforcement actions may be taken under State of California authorities, the NMSA, the MSA, or other relevant legal authority.

E. Permitting

The NMSP regulations, including the regulations for the CINMS, allow NOAA to issue permits to conduct activities that would otherwise be prohibited by the regulations. Most permits are issued by the Superintendent of the CINMS. Requirements for filing permit applications are specified in NMSP regulations and the Office of Management and Budget-approved application guidelines (OMB control number 0648-0141). Criteria for reviewing permit applications are contained in the CINMS and NMSP regulations at 15 CFR 922.77 and

922.48, respectively. In general, permits may be issued for activities related to scientific research, education, and management. Permits may also be issued for activities associated with the salvage and recovery efforts for a recent air or marine casualty. (Emergency activities would not require a permit.)

Nationwide, NOAA issues approximately 200 national marine sanctuary permits each year. Of this amount, two or three are for activities within the CINMS. The majority of permits issued for activities within the CINMS are for activities related to scientific research. NOAA expects this trend to continue with the final regulations. Although there may be an increase in the number of permits requested for activities within the CINMS, NOAA does not expect this increase to appreciably raise the average number of permits issued nationwide. Therefore, NOAA has determined that these final regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act.

V. Summary of Comments and Responses

This section contains NOAA's responses to the substantive comments received on the proposed rule and DEIS. NOAA has summarized the comments according to the content of the statement or question put forward in the letters, e-mails, and written and oral testimony at the public hearings on this action. Many commenters submitted similar enough questions or statements that they could be addressed by one response. NOAA also made several changes in the FEIS in response to the public comments, e.g., updating the socioeconomic and ecological impact analyses. Several technical or editorial comments on the DEIS and proposed rule were taken under consideration by NOAA and, where appropriate, applied to the FEIS and this final rule. These comments are not, however, included in the substantive list below.

NOAA's FEIS contains these comments and responses, but also includes a table listing the names of the individuals that submitted comments on the DEIS and proposed rule and an index indicating which comments were submitted by each person and NOAA's response to those particular comments.

1. *Comment:* Collectively, the following five reasons were identified by commenters in support of NOAA's Alternative 2:

- It provides the greatest amount of ecosystem protection, habitat

representation, and opportunities for species recovery/restoration.

- It best recognizes the intrinsic values associated with biodiversity and ecosystem-based protection.

- It contains zones of sufficient size, space, and connectivity to maximize larval production and recruitment.

- It best fulfills the mandates of the National Marine Sanctuaries Act (NMSA) and the goals of the proposed network.

- It best achieves recommendations in the 2004 report from the Pew Oceans Commission and U.S. Ocean Commission.

Response: Alternative 2 would provide the greatest amount of ecosystem protection as it is the largest spatial alternative. However, Alternative 1 (and its sub-alternatives) provides not only a robust level of ecosystem protection, habitat representation, and opportunity for species recovery and restoration, but is consistent with the existing network established by the State of California (State) in state waters of the Sanctuary and aligned with the offshore marine zones envisioned by the State's preferred alternative in its CEQA document. Also, Alternative 1 (and its three subalternatives) is consistent with the benthic habitat protections adopted by the PFMC and NOAA Fisheries through the EFH conservation areas established by NOAA under MSA regulations (see NOAA's final rule at 71 FR 27408; May 11, 2006). Further, implementation of Alternative 1 would fulfill the mandates of the NMSA, achieve the goals of the CINMS zoning network, and meet several of the recommendations put forward by the Pew Oceans and U.S. Ocean Commissions.

Designation of Alternative 2 under the envisioned regulatory structure may require additional administrative actions that may delay implementation. This regulatory structure, which uses a combination of the MSA and NMSA, may require that the current EFH designation in the Sanctuary, which corresponds to the zone boundaries under Alternative 1, be re-designated to incorporate the larger zone boundaries proposed under Alternative 2. Alternative 1 is the most prudent course of action for the marine zoning network in the Sanctuary.

2. *Comment:* Approximately 30,000 commenters supported NOAA's preferred alternative in the DEIS (Alternative 1A) as the most efficient and coherent zone network for protecting Channel Islands wildlife.

Response: In the DEIS, the three sub-alternatives analyzed under Alternative 1 (1A, 1B, and 1C) provide different

boundary configurations for the marine zoning network based on the extent of federal regulatory overlap in state waters. During the public comment period, the CDFG submitted a letter to NOAA stating that Alternative 1C was the only acceptable alternative. In a January 2, 2007 letter to NOAA, the Secretary of the California Resources Agency reiterated this position again stating that Alternative 1C was the only alternative acceptable to the State of California and that overlap by federal regulations in state waters was never contemplated by the State.

The NMSA allows the Governor of a state for which the NMSP is making changes to a sanctuary's terms of designation to review and reject those changes with regard to state waters. Because implementation of Alternative 1A requires a change to the CINMS terms of designation (to allow regulation of fishing and other resource extraction in State, as well as Federal, waters), NOAA conducted a thorough re-evaluation of Alternatives 1A and 1C, given the Secretary of Resources' opposition to all NOAA alternatives but 1C.

As identified in the DEIS, Alternative 1C leaves small gaps between some of the state designated marine reserves and the proposed federal marine reserves (see section 3.2.4 of the FEIS). The January 2, 2007 letter also stated that the CDFG and the FGC would as soon as possible initiate the process to close the gaps associated with Alternative 1C by bringing the boundaries of a number of the existing state marine zones up to the State-Federal jurisdictional line; that process has commenced. NOAA's analysis identifies that, if these gaps are closed, the differences among the three sub-alternatives are distinguished by management considerations, not ecological and socioeconomic impacts. As such, because the CDFG and the FGC are closing the gaps associated with Alternative 1C, the net ecological benefits and socioeconomic impacts between Alternatives 1A (NOAA's original preferred alternative) and 1C (the State of California's recommended alternative) will be the same. NOAA has determined, therefore, that Alternative 1C will accomplish the goals of the zoning network while respecting the position of the State. If NOAA implements Alternative 1C and the State does not act to close the gaps in a timely manner, NOAA envisions closing the gaps via NMSA regulations.

Furthermore, NOAA and the State strongly support a close, collaborative working relationship to implement the CINMS zoning network and will sign a formal agreement to ensure that

management of the network (e.g., enforcement, education and outreach, and monitoring) is implemented in a collaborative, efficient, and effective manner.

3. *Comment:* Several commenters support the no action alternative because they believe existing regulations are sufficient to meet the goals of NOAA's action.

Response: NOAA has determined existing regulations are not sufficient to meet the goals of this action. The State of California has reached the same conclusion in adopting the state waters portions of the network and is asking NOAA for prompt action in the federal waters zones. NOAA's analysis discusses the relationship of the action with other existing management regimes in the region (see sections 3.1 and 5.1.2 of the FEIS) and the effectiveness they have on achieving NOAA's goals for this action.

Marine zones and sound fishery management are complementary components of a comprehensive effort to sustain marine habitats and fisheries. Marine zones are considered one of many tools available to ocean managers and are not the only tool used in the project area for this action. However, certain ecosystem functions cannot be protected as well by other management measures. For example, size, season, and bag limits do not prevent bycatch of non-target species or undersized individuals nor do they fully provide for natural predator and prey interactions. Traditional single species-based management measures alone have not been sufficient to protect groundfish and other populations in the CINMS region and other parts of the world. Incidental impacts of various fishing practices may also have unintended effects that would not occur in a marine zone, particularly in a no-take reserve. This includes both direct impacts to the environment (e.g., habitat damage from trawling) and indirect ecosystem impacts (e.g., removing all large, old fish and altering the species size composition). Marine zones of the type proposed here by their nature provide relatively undisturbed habitats and act as "natural hatcheries", which leads to benefits in total production and export of young.

NOAA's action is intended to address a suite of ecological goals, including providing special protection of habitats and species for their intrinsic values. Marine zones of the type proposed here provide insurance for management uncertainty by providing areas where species can interact in a relatively undisturbed ecosystem. Furthermore, NOAA's action under the NMSA does

not duplicate existing NOAA regulations promulgated under the MSA. The regulations being issued under this action have been carefully crafted in such a way so that the regulations being issued here under the NMSA are subject to NOAA's regulations under the MSA. This applies to the current regime and any future changes, so that if NOAA were to amend the MSA regulations, the applicability of the NMSA regulations would expand or contract automatically to ensure complete protection with no duplication. See the final regulations for how this is achieved.

The specific integration of marine zones into fisheries management, including reductions in overall fleet capacity, total allowable catch, and allocation between user groups is more appropriately dealt with through the PFMC and FGC processes, which is used to establish these limits.

4. *Comment:* Several commenters support the no action alternative because they believe that any additional zones can and should be designated by the PFMC via the MSA and the State of California via State statutes.

Response: In May 2005, NOAA presented the PFMC, per section 304(a)(5) of the NMSA, with the opportunity to prepare draft NMSA fishing regulations to meet the goals of the CINMS marine zones. Section 304(a)(5) requires that the relevant Fishery Management Council be given the opportunity to prepare draft fishing regulations within the Exclusive Economic Zone (EEZ) portion of the given sanctuary. The EEZ portion of the CINMS is from 3 to 6 nmi offshore the northern Channel Islands. The PFMC responded and recommended that fishing regulations for the CINMS marine zones in federal waters be implemented through the existing authorities of the MSA and the states of California, Oregon, and Washington.

Based on its review of the existing factual and scientific evidence, NOAA determined that there was a credible basis for regulations prohibiting the use of bottom-contact gear in the CINMS marine zones under the MSA. With respect to fishing throughout the remainder of the water column, however, NOAA determined that there was an insufficient factual and scientific basis to support pursuit of this aspect of the PFMC's proposal under the MSA. NOAA determined that the PFMC's recommendations did not have the specificity or record to support the use of the MSA or state laws to establish limited take or no-take zones in the water column and thereby did not fulfill the goals and objectives of the CINMS.

Further, MSA regulations cannot legally address other extractive activities that could be addressed under the NMSA, such as certain scientific research activities. In response, the PFMC changed its recommendation under Amendment 19 to the Pacific Coast Groundfish Management Plan (see next paragraph) to close the existing and proposed CINMS marine zones to only bottom-contact gear.

In 2006, the PFMC submitted and NOAA approved Amendment 19 to the Pacific Coast Groundfish Fishery Management Plan, which, among other things, identified and described EFH within the CINMS for groundfish species and designated the existing and proposed CINMS marine zones as Habitat Areas of Particular Concern (HAPC). Amendment 19 also prohibited the use of bottom-contact gear in the CINMS HAPCs.

The final NMSA regulations for this marine zones action prohibit those extractive activities within the marine zones that are not prohibited by 50 CFR part 660, the NOAA regulations that govern "Fisheries off West Coast States," which includes the Amendment 19 regulations. Therefore, if an extractive activity is prohibited by those MSA regulations, it is not prohibited by the NMSA regulations. Conversely, all extractive activities not prohibited by those MSA regulations in the marine reserves are prohibited by these NMSA regulations. In the future, if NOAA were to amend the MSA regulations to prohibit additional extractive activities in the marine zones, notice and opportunity for public comment would be provided regarding those activities no longer being prohibited by regulations under the NMSA. Likewise, if NOAA were to amend the MSA regulations to allow currently prohibited extractive activities in the marine zones, notice and opportunity for public comment would be provided regarding those additional activities being prohibited under these NMSA regulations.

5. *Comment:* Ecosystem-based management should be favored over traditional fisheries management in this action, because it is more effective at meeting NOAA's purpose and need.

Response: This action to complete the CINMS marine zoning network is a form of ecosystem-based management that is being applied to meet NOAA's responsibility to protect Sanctuary resources. Sanctuary resources are defined at 15 CFR 922.3 as follows:

"Sanctuary resource means any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological,

historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brinaseep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources."

6. *Comment:* Limit the proposed designation document changes and regulations to prohibit non-fishing activities and fishing in the water column only.

Response: Under the NMSA, when a national marine sanctuary is designated, NOAA must specify the new sanctuary's "terms of designation." The terms of designation include the boundaries of the sanctuary, the characteristics that give it value, and "the types of activities that will be subject to regulation" by NOAA. Terms of designation may only be modified by following the same procedures by which the sanctuary was designated. The types of activities subject to regulation are usually expressed in fairly general terms. This is necessary to allow NOAA to make appropriate modifications to the regulations in the future, e.g., to allow for adaptive management. However, even minor changes must be made through a full public process, including an opportunity for the public to review the change and provide comment before it is finalized. Furthermore, NOAA must prepare all legally required analysis for such regulatory changes, including appropriate environmental and economic impact analyses (under the National Environmental Policy Act and Regulatory Flexibility Act).

The designation document amendment has been carefully crafted and comments were solicited from NOAA Fisheries, other relevant resource management agencies, and the PFMC. It is also crafted to be consistent with the deliberations made throughout this process, including the community and state phases (see the Executive Summary of NOAA's FEIS for a summary of the process). As indicated above, the scope of authority defined in designation documents for all national marine sanctuaries is typically general, and the implementing regulations are more specific. NOAA believes this provides sufficient parameters to its authority while allowing flexibility to manage the network adaptively in the future in response to biological, ecological, and economic indicators of the network's effectiveness. Any proposed regulatory adjustment to the current network would undergo

rigorous environmental review, analysis, and public input.

As indicated above, in contrast to the general scope of the terms of designation, sanctuary regulations are often very specific and are developed to implement the terms of designation by defining the human activities that are prohibited or otherwise restricted. The final regulations for this NOAA action prohibit those extractive activities within marine reserves that are not prohibited by 50 CFR part 660, the NOAA regulations that govern "Fisheries off West Coast States" (MSA regulations). Therefore, if an extractive activity is prohibited by MSA regulations, it is not prohibited by these final NMSA regulations. Conversely, all extractive activities not prohibited by MSA regulations are prohibited by these final NMSA regulations within marine reserves.

Furthermore, NOAA has determined that limiting the scope of the regulations and terms of designation to prohibiting activities only within the water column would leave unacceptable gaps in the cover of the regulations. Certain activities, such as scientific research, would not be covered by other regulations (either State or MSA regulations) thus preventing total closure of the zones. Given this, NOAA has determined that limiting the scope of the regulations and terms of designation would not meet its purpose and need for this action.

7. *Comment:* The geographic scope of the proposed authority to regulate fishing under the NMSA, as described in the DEIS, is too broad.

Response: The designation document amendment has been carefully crafted and comments solicited from NOAA Fisheries, other relevant resource management agencies, and the PFMC. It is also crafted to be consistent with the deliberations made throughout this process, including the community and state phases (see the Executive Summary of NOAA's FEIS for a summary of the process). The scope of authority defined in designation documents for all national marine sanctuaries is typically general, and the implementing regulations are more specific. NOAA believes this provides sufficient parameters to its authority while allowing flexibility to manage the network adaptively in the future in response to biological, ecological, and economic indicators of the network's effectiveness. Any proposed regulatory adjustment to the current network would undergo rigorous environmental review, analysis, and public input.

8. *Comment:* CINMS lacks a fisheries manager position, expert fisheries

advisory bodies, an extensive stakeholder input process, and overall adequate organization for fisheries management, which will complicate existing fisheries management coordination.

Response: The CINMS marine zoning process has required close coordination among staff from the PFMC, NOAA Fisheries, CDFG, FGC and NMSP, and the constituents involved in the respective public policy forums. See Appendix D of the FEIS for a meeting history among these organizations during the CINMS marine zoning process.

In addition, the CINMS Advisory Council has provided, and will continue to provide, a robust, open, and transparent community based public forum to provide advice to NOAA on resource protection, education, and research issues, including fishing issues within the Sanctuary. The Advisory Council has representatives from all major sectors that utilize the CINMS, including commercial and recreational fishermen and the region's primary fisheries regulators, NOAA Fisheries and the CDFG. In addition, the Advisory Council's recreational fishing working group has representatives from local, regional, and national fishing organizations, including United Anglers of Southern California and the Recreational Fishing Alliance. The commercial fishing working group includes representatives from the Santa Barbara and Ventura fishing communities and fishing organizations such as the Sea Urchin Harvesters Association.

9. *Comment:* Commenter requests funding for collaborative research involving the fishing community.

Response: NOAA continues to support and fund the Channel Islands Collaborative Marine Research Program (CMRP), managed by the Channel Islands Marine Sanctuary Foundation, which involves the commercial and recreational fishing communities. To date the CMRP has funded close to \$200,000 in research projects involving commercial and recreational fishermen and the scientific community. If future CINMS budgets are stable, funding for this program would continue.

10. *Comment:* NMSA fishery regulations need to be enforceable, clearly understood by the public, and meet the goals and objectives of the PFMC and NOAA.

Response: NOAA has utilized and continues to seek guidance on enforcement of NMSA regulations provided by the PFMC Enforcement Sub-committee, CDFG wardens, National Park Service (NPS) Park

Rangers, the NOAA Office of Law Enforcement, and U.S. Coast Guard (USCG) officials. These enforcement experts have provided extensive input on the regulations, and this input is reflected in the final rule. Further, this NOAA action is intended to achieve goals established for the CINMS marine zones under the NMSA, not specific PFMC fishery goals.

11. *Comment:* The various agencies are under-funded and there are not enough staff members to monitor and enforce the existing or proposed project.

Response: NOAA believes that adequate resources exist to manage, monitor, and report on the CINMS marine zones. The Channel Islands region benefits from the resources and coordinated efforts of multiple state and federal agencies and institutions. Through formal and informal agreements, the CDFG, NOAA, the USCG, and the NPS will continue to work collaboratively to monitor, enforce, and manage the marine reserves network.

In addition to research by these agencies, other research organizations and institutions (e.g., University of California, California State Universities, and California Sea Grant Extension Program) have provided research, monitoring and evaluation programs and opportunities. Existing monitoring projects will continue to provide data on changes in the abundance of various species in the region (see http://www.dfg.ca.gov/mrd/channel_islands/monitoring.html).

Interagency coordination will result in more efficient use of NOAA and State resources. CDFG enforcement staff cooperates with other public agencies through existing agreements and there are several enforcement agreements and funding mechanisms among the CDFG, the NPS NOAA, and the USCG.

12. *Comment:* Commenter believes there is currently not enough research for NOAA to choose Alternatives 1 or 2 and therefore supports the no action alternative.

Response: NOAA's analysis contained in the proposed rule, DEIS and FEIS presents detailed information on the projected biological and socioeconomic impacts of its alternatives for this action and believes this adequately supports the final action.

13. *Comment:* Commenter requests installation of artificial reefs and rigs-to-reefs programs to create replacement fishing opportunities to mitigate the loss of fishing grounds.

Response: Under NOAA's action, fishing would continue to be allowed in 81% of the Sanctuary (over 800 square nmi), subject to existing state and

federal fishery regulations. NOAA expects displacement impacts resulting from its action will be minimal (see section 5.1 of the FEIS). NOAA does not believe there will be any significant loss of fishing grounds and, therefore, no need to develop any mitigation measures at this time. The CINMS social science program calls for monitoring displacement of fishing effort to determine if any mitigation efforts are warranted. Should displacement impacts prove to be significant in the future, NOAA and the State have the ability to take appropriate action under their respective authorities.

14. *Comment:* The action will displace fishing effort and increase impacts in other areas.

Response: Displacement from NOAA's action is expected to be minimal and less than significant (see section 5.1 of the FEIS). Ongoing monitoring, research, and evaluation after implementation will provide additional information on this issue. Should displacement impacts prove to be significant in the future, NOAA and the State have the ability to take appropriate action under their respective authorities.

15. *Comment:* There is no dedicated source of funding at CINMS for education and outreach programs that explain fishery management measures, marine zoning, and marine access programs.

Response: A significant amount of funding from the CINMS budget is dedicated to extensive education and outreach efforts on the CINMS marine zones. Since 2000, the CINMS education and outreach program has been helping the public understand what and where the state marine reserves and marine conservation areas are within the Sanctuary, why they were established, and what we can learn from them (see the Public Awareness and Understanding action plan in section III of the CINMS draft management plan at <http://www.cinms.nos.noaa.gov/manplan/overview.html>). The CINMS also works closely with CDFG to match funding for marine zoning education and outreach. Education and outreach on regional fishery management measures is addressed by NOAA Fisheries, the PFMC, and the CDFG.

16. *Comment:* NOAA should consider more stringent restrictions for commercial lobster fishing and more lenient restrictions for recreational lobster fishing.

Response: Lobster fishing is regulated by the FGC. The existing marine zoning network adopted by the State of California includes two marine conservation areas (Anacapa Island

MCA and Painted Cave MCA) that permit recreational lobster harvest. Commercial lobster fishing is allowed in the Anacapa MCA, but not in the Painted Cave MCA.

17. *Comment:* The FEIS should discuss the effectiveness of other agency management actions.

Response: NOAA's DEIS included a detailed discussion the relationship of NOAA's preferred action with other existing management regimes in the region (see, e.g., sections 2.2 and 3.1.2.1). The effectiveness of these regulatory regimes in achieving NOAA's goals for this action is also discussed. These sections are included in the FEIS.

18. *Comment:* The Channel Islands National Marine Sanctuary (CINMS) Advisory Council (SAC) should be reformed to better address fisheries issues. Specifically, the SAC lacks any members with expertise in fisheries economics, anthropology, geography, etc.

Response: The SAC has representatives from the CDFG and NOAA Fisheries. Representatives from these two entities, in addition to the representatives from commercial and recreational fishing interests and their associated community-based fishing working groups, provide NOAA with significant insight into fisheries issues. In addition, NOAA Fisheries and the CDFG representatives also serve as a conduit to the PFMC and FGC, respectively, which brings NOAA additional perspective on fisheries issues. Moreover, the vast majority of issues faced by the CINMS and its SAC are not related to fisheries and, therefore, require a broad and diverse SAC membership.

19. *Comment:* The "effective date" provision in the proposed regulation is unclear, burdensome, and inconsistent with the model language previously presented to the PFMC by NOAA for inclusion under the NMSA 304(a)(5) process, and therefore should not be used.

Response: The effective date clause has been omitted from the final rule.

20. *Comment:* Do not remove the Marine Reserve Working Group's (MRWG) sustainable fisheries goal of integrating marine reserves with existing fisheries management.

Response: The goals for NOAA's action are based on the NMSA. NOAA's goals for this action do attempt to address the goals put forward by the MRWG where appropriate.

21. *Comment:* The CINMS should be an "experimental station" for holistic management.

Response: NOAA manages the National Marine Sanctuary System on

the principles of ecosystem-based management. This "holistic" approach attempts to incorporate all functions of the marine environment into the decision-making process at all sanctuaries, including the CINMS.

22. *Comment:* NOAA should expand its assessment of the action's economic impacts to better account for non-monetary benefits.

Response: NOAA believes the analysis of the passive (non-use) value of the marine zones is sufficient to inform its decision making on this action (see Section 5.2.6 of the FEIS for an evaluation of the passive values associated with NOAA's action).

23. *Comment:* Marine reserves are superior to marine conservation areas in meeting NOAA's purpose and need and are more consistent with the MRWG's recommendations.

Response: See section 3.1.2.2 of the FEIS for a discussion of the differences between marine reserves and marine conservation areas.

24. *Comment:* Many commenters state NOAA should implement the offshore waters of the CINMS marine zone network as the final phase of the CINMS marine reserves process that began in 1999.

Response: See section 2.0 of the FEIS for a description of the purpose of this action, which identifies complementing the existing state network as one of the goals.

25. *Comment:* NOAA should consider fishing as an important cultural resource and protect it as such.

Response: NOAA has carefully evaluated the impacts of the action on fishing communities and has determined the impacts to be minimal. See section 5.2 of the FEIS.

26. *Comment:* Commenter is concerned about the impacts of bottom trawl and long line fishing, bycatch, harvest of bait fish, pesticides and pollution in the ocean, and impacts to kelp and coastal ecosystems.

Response: Marine zones provide reference sites in which to gauge the impacts of many of the commenters' concerns relative to fished areas.

27. *Comment:* Commenter recommends increasing the number of regional field game wardens and their wages, increasing fines, and making sure catch limits are enforced.

Response: NOAA recognizes the critical role enforcement officials play in management of the marine zoning network. This recommendation, however, is outside the scope of NOAA's immediate action.

28. *Comment:* NMSA fishing regulations and designation document amendments for the CINMS marine

zones should automatically expire ("sunset") at the time MSA regulations are promulgated.

Response: NOAA has determined that provision a sunset date is not appropriate because it would not provide NOAA with the flexibility to adaptively manage and respond to unforeseen circumstances.

29. *Comment:* The proposed closures don't greatly affect commercial fishermen, but the previous closures have been devastating.

Response: NOAA's analysis takes existing fishery closures into account and acknowledges their socioeconomic and biological impacts. For this particular CINMS action, NOAA's analysis has determined that the socioeconomic impacts of new closures in the federal waters of the network will be minimal (see section 5.2 of the FEIS for more details).

30. *Comment:* If sea urchin fishermen were offered money for their urchin permits, they might move on to a different career, but they can't transfer or sell their permits.

Response: The issue of permit transferability is beyond the scope of this action and would be handled by the CDFG and FGC, who both issue and manage these types of permits.

31. *Comment:* Pollution has a huge impact on water conditions and the resources in southern California.

Response: Marine resources in the Southern California Bight, such as kelp forest ecosystems, have declined under pressure from a variety of factors, including commercial and recreational fishing, changes in oceanographic conditions associated with El Niño and other large-scale oceanographic cycles, introduction of disease, and increased levels of pollutants. Marine reserves offer scientists and resource managers a controlled opportunity to study the influence of change (e.g., pollution) on marine ecosystems in the absence of direct human disturbance (e.g., fishing pressure).

32. *Comment:* The regional seal population negatively impacts the regional halibut population.

Response: The management of seals and halibut as individual species falls under the purview of NOAA Fisheries and the PFMC and is outside the scope of this rule.

33. *Comment:* The DEIS was not distributed to the United Anglers of Southern California.

Response: NOAA records indicate the President of United Anglers of Southern California was sent a copy of the DEIS on Aug. 11, 2006, and was notified electronically via e-mail of the availability of the document on the

CINMS Web site or by requesting a copy from the CINMS.

34. *Comment:* NOAA's aerial monitoring program data does not account for existing regulations (such as the Rockfish Conservation Area) displacing fishing vessels. NOAA has, therefore, erroneously concluded that there is little fishing activity in the proposed zones.

Response: NOAA's aerial monitoring program, which has been collecting data since prior to the establishment of the Rockfish Conservation Area, confirms that there is little fishing activity in the geographic area associated with NOAA's action. See section 5.2.6.4 of the FEIS for NOAA's analysis of this issue.

35. *Comment:* There are too many marine reserves and not enough marine conservation areas in NOAA's proposed action.

Response: Marine conservation areas will not achieve the purpose and goals of the action as well as marine reserves. However, NOAA has decided to establish one marine conservation area off of Anacapa Island to ensure consistency with the State of California's marine zone network, which also established a marine conservation area in that location. See sections 3.1.2.2 and 5.1.1.1 of the FEIS for more discussion on the ecological value of marine reserves compared to marine conservation areas.

36. *Comment:* NOAA should implement marine parks where pelagic fishing is allowed, especially in the Footprint area.

Response: Allowing the take of pelagic species does not fully meet the goals of NOAA's action. See section 3.1.2.2 of the FEIS for a discussion on the impacts of limited take.

37. *Comment:* NOAA's action will negatively impact uses prioritized in the Local Coastal Plan, such as commercial fishing, tourism, and residential sectors, and therefore the commenter supports the no action alternative.

Response: NOAA supports healthy fisheries, economies, and harbors and believes the zoning network is likely to support Sanctuary-dependent and coastal dependent uses. The proposed marine zones are expected to promote visitation and may assist, over the long term, in the sustainability of local fisheries.

On March 16, 2007, the Coastal Commission held a public meeting on NOAA's proposal pursuant to its authorities under section 307 of the Coastal Zone Management Act (16 U.S.C. § 1456). At that meeting, the Coastal Commission issued a conditional concurrence for the consistency determination by NOAA on

the grounds that, if modified as described in the Commission's conditional concurrence below, the project would be fully consistent, and thus consistent to the maximum extent practicable, with the policies of Chapter 3 of the Coastal Act. The conditional concurrence is: "In the event NOAA elects not to implement Alternative 1a, NOAA will implement Alternative 1c, with the following additional provisions: until such time as the Resources Agency and the Fish and Game Commission designate the areas in between the existing State-designated MPAs and the 3 mile limit (*i.e.*, the "gaps" between the existing state MPAs and the federal MPAs depicted in Alternative 1c), or the Fish and Game Commission/DFG and NOAA enter into an interagency agreement that establishes MPA protection for these "gap" areas, NOAA will expand Alternative 1c to include in its MPA designation these "gaps" between the outer boundaries of the existing state MPAs and the State-federal waters boundary (3nm from shore)." NOAA is, therefore, leaving the record open with regard to a decision to establish marine zones in state waters of the Sanctuary, and is requesting additional public comment on this specific issue.

38. *Comment:* NOAA should not reject the zone options put forward by local fishermen.

Response: NOAA conducted a preliminary analysis on all of the fishermen options and determined that they did not adequately or completely protect a full range of habitats and populations in the Sanctuary and thus do not satisfy the purpose and goals of NOAA's action. For more, see section 3.2.5 of the FEIS.

39. *Comment:* Incorporate into the FEIS all of the PFMC Science and Statistical Committee's (SSC) critique of the CINMS marine zoning process and Sanctuary documentation.

Response: The input from the SSC has been addressed in NOAA's analysis in the FEIS. The SSC's input can be found at <http://pcouncil.org/>

40. *Comment:* Include a verbatim copy of the original designation document in the FEIS and proposed rule so the public can compare the proposed amendments.

Response: The original designation document, in its entirety, and the amendments being made by this action are included in this preamble to the final rule.

41. *Comment:* NOAA's environmental review process is not a robust stakeholder process like the PFMC process, because CDFG and the PFMC are not represented.

Response: The CDFG, PFMC, and NOAA Fisheries have been integral partners in the process to date. CDFG and NOAA Fisheries, which both have membership on the PFMC, also hold seats on the CINMS SAC.

42. *Comment:* Include discussions and consultations with the State of California, other agencies within NOAA, and the other agencies within the government in the public record.

Response: All official correspondence related to this action and all comment letters NOAA has received on this action are available on the CINMS Web site at <http://www.cinms.nos.noaa.gov/marineres/main.html>.

43. *Comment:* Include in the FEIS the journal article written by NOAA employee Mark Helvey that critiques the community-based phase of the CINMS marine zoning project.

Response: NOAA has determined this article is not integral to the decision making process for this action and should not, therefore, be included in the FEIS.

44. *Comment:* Recreational fishermen have a relatively minimal impact on the resources and should not be excluded from the CINMS marine zones.

Response: NOAA has determined that any take of marine resources within the marine reserves would compromise the goals for this action. Limited take is allowed in the Anacapa Marine Conservation areas Area in order to be consistent with the State's action, which in turn determined that the overall benefits of limited take status in the marine conservation areas (areas off Anacapa Island and Santa Cruz Island, the latter area totally in state waters) might be studied in comparison to the overall benefits of no-take status in marine reserves. Fishing is allowed throughout the rest of the Sanctuary, subject to other existing federal and state restrictions where applicable.

45. *Comment:* Restrict sea lion populations in the CINMS region because they may be contributing to the demise of fishing.

Response: Sea lions are protected under the Marine Mammal Protection Act, which is administered by NOAA Fisheries.

46. *Comment:* The decline in many species, like abalone, is due to natural cycles and the reintroduction of sea otters, not over-fishing or excessive take by sport divers.

Response: Abalone decline has been linked to a combination of human and natural caused influences. For more see Karpov *et al.* 2000 and Moore *et al.* 2002. Karpov, K. A., P. L. Haaker, I. K. Taniguchi, and L. Rogers-Bennett. 2000. Serial depletion and the collapse of the

California abalone (*Haliotis* spp.) fishery. /In/ Workshop on rebuilding abalone stocks in British Columbia, A. Campbell, ed. Can. Spec. Publ. Fish. Aquat. Sci. 130: 11–24. Moore, J.D., C. A. Finley, T. T. Robbins, and C. S. Friedman. 2002. Withering syndrome and restoration of southern California abalone populations. CalCOFI Report. 43: 112–117.

47. *Comment:* The Gull Island and Footprint closures will greatly affect harpoon sword fishermen, who have limited access to these two areas due to weather, fishing seasons, and migration patterns of the fish.

Response: While any impact may seem significant for those who experience it, NOAA's economic analysis has determined that the socioeconomic impact to fisheries from NOAA's action will be minimal.

48. *Comment:* How will enforcement work with a harpooned fish that swims into a closed area?

Response: Each situation is evaluated on a case by case basis to determine whether an enforcement response is warranted, and if so, the appropriate course of action.

49. *Comment:* Commenter acknowledges the usefulness of creating an MPA for scientific study purposes, but believes there is no urgent need to do so in CINMS.

Response: For more on the need for this action, see section 2.0 of the FEIS.

50. The Pacific Fishery Management Council process is a fair, public and scientifically based process to deal with conservation and/or fishery management questions.

Response: NOAA recognizes and supports the PFMC's role in addressing fishery management issues.

51. *Comment:* The proposed closures will affect the supply of seafood locally and nationally.

Response: On page 25 of Leeworthy, Wiley, and Stone (2005), the potential impacts on supply and prices of various seafoods are assessed for potential losses as measured by consumer surplus (i.e., losses to consumers from restrictions in supply of commercial seafood). Per this analysis, none of the alternatives considered would change the amount of supply enough to have any effects on prices and thus, no loss in consumer surplus. Leeworthy, Vernon R., Peter C. Wiley and Edward A. Stone, 2005. Socioeconomic Impact Analysis of Marine Reserves for the Channel Islands National Marine Sanctuary. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, Special Projects, Silver Spring, Maryland, May 2005.

52. *Comment:* If an area is closed to commercial fishing it should also be closed to recreational fishing because recreational fishing has an impact on the resource too.

Response: All fishing (both commercial and recreational) in the marine reserves is prohibited. See Response 44 for information about the Anacapa Marine Conservation Area.

53. *Comment:* The simultaneous rule changes to both the CINMS management plan and designation document indicate that the NMSP intended to create the marine zones well in advance of it having the authority to do so, indicating the process has been designed simply to justify the preconceived conclusion.

Response: This action and the CINMS management plan review process are distinct processes with separate and distinct rules and amendments to the CINMS designation document. With regard to the designation document changes and regulations for this action, NOAA has followed the processes to prepare NMSA regulations for fishing (and other activities) and to amend the CINMS designation document in compliance with the requirements of the NMSA. A history of the NMSA process for preparing fishing regulations and amending the Sanctuary's designation document for this action can be found on the CINMS Web site at <http://channelislands.noaa.gov/marineres/main.html>.

54. *Comment:* NOAA fails to provide scientific support for the need to impose the severe restrictions on recreational fishing.

Response: The need for NOAA's action is detailed in general in section 2.0 and specifically as it pertains to recreational fishing in section 5.1.1.1 of the FEIS.

55. *Comment:* NOAA fails to adequately address the proposals of the Pacific Fishery Management Council with regard to management under the Magnuson-Stevens Act.

Response: The PFMC's proposal that was submitted through formal consultation did not fulfill the purpose and goals of this action (see, for example, section 3.1.2.1 of the FEIS for more details on this process). See also, for example, the responses to #4 and #17 above.

56. *Comment:* NOAA fails to consider the economic impacts on recreational fishing beyond the charter sector.

Response: In addition to the charter sector, NOAA's economic impact analysis on recreational fishing included evaluation of impacts to private boat fishing and consumptive diving (see section 5.2.3 of the FEIS).

57. *Comment:* The DEIS justifies a preconceived outcome, rather than providing the analysis of a full range of options as required by the National Environmental Policy Act.

Response: The range of alternatives and analysis of them is sufficient under the requirements of NEPA (see section 3.1 of the FEIS).

58. *Comment:* NOAA fails to properly follow the requirements of the NMSA in preparing regulations for fishing and modifying the CINMS terms of designation.

Response: NOAA has followed the processes to prepare NMSA regulations for fishing and to amend the CINMS designation document in compliance with the requirements of the NMSA. A history of the NMSA process for preparing fishing regulations and amending the Sanctuary's designation document for this action can be found on the CINMS Web site at <http://channelislands.noaa.gov/marineres/main.html>. See also, for example, memorandum for the record from Daniel J. Basta, Director, National Marine Sanctuary Program, re: Reiteration of Rational for the Decision to Issue Fishing Regulations for the Channel Islands National Marine Sanctuary under the National Marine Sanctuaries Act.

59. *Comment:* Acknowledge in the FEIS and final rule that fishing regulations are being developed by the PFMC that relate to this action.

Response: See section 3.1.2.1 of the FEIS for a description of the correlation between the PFMC's actions and this action. See also the response to #17 above.

60. *Comment:* Does quantifying the difference between the biological benefits of marine reserves versus the biological benefits of limited take marine conservation areas advance the process of evaluating the cost benefit analysis of the project under the NEPA?

Response: NOAA has determined that marine reserves provide greater biological benefit than marine conservation areas. In addition, prohibition of all take is necessary to achieve the goals for this action. (See Response 44 regarding the one marine conservation area.) With regard to economic evaluation, NOAA's analysis has determined that the potential impacts are expected to be minimal.

61. *Comment:* Ecological response in areas that are not currently fished or lightly fished will likely be less than that response predicted for protection of more heavily fished areas in state reserves.

Response: Final outcomes of the marine zones will be subject to a variety

of ecological and economic responses that are challenging to predict. As discussed, NOAA will monitor the impact of the reserves to determine the actual responses.

62. *Comment:* Conduct an analysis of alternatives for the scale of no-take reserves that could mitigate mandatory stock rebuilding timelines and examine alternatives to the size of CINMS reserves that would mitigate the size of the California Rockfish Conservation zone in the Sanctuary as an explicit trade off in stock rebuilding tactics.

Response: As stated in the FEIS, the purpose of NOAA's proposed action is to further the protection of CINMS biodiversity and to complement the existing network of marine zones established by the State. This action is not being proposed as a stock rebuilding measure.

The scale of marine zones in the Sanctuary is expected to primarily affect local populations of fish, rather than stocks that range along the entire west coast. Marine reserves that incorporate locations where overfished groundfish can be found may protect a portion of the population from fishing mortality as well as protect habitats from disturbance by fishing and other gear.

NOAA's action also addresses ecological goals that do not relate to fisheries management. The NOAA Fisheries and State groundfish closures are directed at rebuilding specific species of groundfish, not at a wide range of other species. In addition, the groundfish closures are based on annual assessments and could be removed if assessments improve.

63. *Comment:* Assess stock rebuilding goals and an adaptive management approach to the MPAs in the event of an oceanographic regime change that results in more stable recruitment of depleted fisheries.

Response: One of the benefits of complete no-take zones is that they provide research and reference areas. Monitoring of the CINMS zones is expected to provide information on a wide variety of ecosystem parameters (including oceanographic effects) and the effectiveness of closing these areas on Sanctuary biodiversity and habitat protection. In addition, as stated above, this action is to further the protection of biodiversity of the CINMS and to complement the existing network of marine zones established by the State and is not being proposed as a stock rebuilding measure. Any changes to groundfish conservation measures would require action by the implementing authorities, the PFMC and NOAA Fisheries.

64. *Comment:* Consider habitats that are important to overfished groundfish, including shelf and slope habitats outside the CINMS boundary as a trade off in relaxing regulations in the Cow Cod Conservation zone.

Response: NOAA's action was developed through analysis of network design based on ecological criteria within the boundaries of the CINMS. Further, NOAA's action is to further the protection of biodiversity and to complement the existing network of marine zones established by the State and is not being done as a stock rebuilding measure for an individual species of fish. Any changes to the Cow Cod Conservation zone would require action by the implementing authorities, the Pacific Fishery Management Council and NOAA Fisheries.

65. *Comment:* NOAA should not take on any more administrative capacity until it develops performance criteria for synthesizing and managing marine reserves monitoring data.

Response: CDFG and NOAA have a State/Federal partnership to monitor the biological and socioeconomic changes occurring inside and outside of the CINMS marine zoning network. NOAA works with a multitude of partners, such as the National Park Service and UCSB, to analyze data from a variety of research projects. The Sanctuary Advisory Council's Research Activities Panel (RAP) reviews research priorities and activities related to the marine zones and assists NOAA and the CDFG with determining the effectiveness of the zoning network. Performance criteria are included in the monitoring plans (see http://www.dfg.ca.gov/mrd/channel_islands/monitoring.html).

66. *Comment:* The Species of Interest list in the DEIS states that species at the edge of their range are excluded from the list. However, eight species on the list, including Pacific ocean perch, dark blotch rockfish, widow rockfish, black rockfish, canary rockfish, yelloweye rockfish, Pacific cod and Pacific herring, have never been caught at the Channel Islands.

Response: The CINMS occurs at a biogeographic boundary between the colder water Oregonian province to the north and the warmer water Californian province to the south. The western portion of the Sanctuary typically lies in the colder waters of the Oregonian Province. San Miguel Island, with its influence of Oregonian province waters, may offer suitable habitat for species that are more common in central and northern California. For instance, yelloweye rockfish and widow rockfish, which are common between Alaska and northern California, have been

documented to occasionally occur at San Miguel Island (Love *et al.* 2002).

67. *Comment:* A discrepancy exists between the fishing regulations reported in Appendix F of the DEIS and the notes regarding the status of fishing for certain species in Appendix G. For example, Appendix G lists pink, red and white abalone as fished species, while Appendix F states that abalone may not be taken.

Response: Footnote 1 in Appendix G intends to identify species that have either been historically fished and/or currently fished in the CINMS. The language has been clarified to highlight that species denoted with the footnote could indicate either a historical or current fishery.

68. *Comment:* The Sanctuary is only providing 1.7 square miles for pelagic fishing, while prohibiting fishing in approximately 130 square miles.

Response: Under NOAA's action, pelagic fishing would continue to be allowed in 81% of the Sanctuary (over 800 square nmi), subject to existing state and federal fishery regulations.

69. *Comment:* When reserves network experiments are designed to sustain fisheries, the monitoring programs must be designed to measure the species they are designed to manage. The commenter provides several specific recommendations for such a monitoring program.

Response: Although NOAA's action is not being implemented to sustain fisheries, the zone monitoring program for the CINMS network is guided by the CDFG's Channel Islands Marine Protected Area Monitoring Plan and the Channel Islands Deep Water Monitoring Plan Development Workshop Report. The monitoring programs involve a variety of partners collecting data on species, communities and habitats that occur in the Sanctuary. Performance of the zone network will be based on analysis of trends in biological parameters, such as abundance, mean size and reproductive potential of various species. Performance may be determined by either examining biological parameters at an individual site before and after the designation of the zone or comparing biological parameters at sites inside and outside of the zones.

A multitude of partners work with NOAA and CDFG conducting monitoring activities and collecting information on a variety of species and habitats. The data collected on a comprehensive suite of species inhabiting the Sanctuary allows for an assessment of zone effectiveness on both targeted and non-targeted species as well as community-level changes as a

result of prohibited activities. NOAA and the CDFG plan a major review of the monitoring program's results in spring of 2008. For more information on the monitoring program, go to http://www.dfg.ca.gov/mrd/channel_islands/monitoring.html.

70. *Comment:* There is no scientific validity of identifying the transition zone as a unique region between the Californian and Oregonian bioregions and therefore the recommendations on the number and spacing of individual zones and total size of the preferred alternative is flawed.

Response: The transition zone was identified as a unique region by the Science Advisory Panel during the MRWG process. The zone is delineated by steep persistent isotherms from satellite sea surface temperature images. It is a region with its own dynamics relative to the Oregonian and Californian subregions within CINMS. Unique species interactions occur in the transition zone because of mixing of two groups of species from the adjoining bioregions.

Marine reserves in the transition zone provide several ecological benefits. First, they may function as replicate sites that provide insurance that a single catastrophic event would most likely not impact all zones at the same time. Second, establishment of marine reserves in the transition zone enhances three of the criteria that contribute to biodiversity conservation: habitat representation, habitat replication, and connectivity between individual reserves that contribute to meeting the action goals (as discussed in Section 3.3 of the FEIS). Finally, protection of habitats and species in the transition zone is also valuable to scientists because it allows them to utilize the unique species' interactions to study marine evolution and ecology.

71. *Comment:* The DEIS describes Sanctuary resources as in decline, which is flawed and inaccurate.

Response: Section 4 of the FEIS, Affected Environment, has been updated vis-à-vis the DEIS to include a discussion of the current status and trends of those species that were historically in decline and are now showing some signs of recovery. For example, giant kelp distribution and productivity in California has increased since the 1998 El Niño event, potentially as a result of a decadal shift in climatic conditions, although not to historical levels preceding the 1980s. However, a general declining trend in the density and abundance of kelp canopy over the past 40 years has been documented in the scientific literature, particularly in southern California. The

decline has been attributed to a variety of both natural and human caused disturbances. Natural disturbances include a corresponding warming trend in sea surface temperatures and the frequency of severe El Niño events. Human caused disturbances include increased turbidity, siltation, pollution and commercial and recreational fishing activities that remove animals such as California sheephead and California spiny lobster that affect species grazing on kelp.

Over the past few years, oceanographic conditions have been characterized by relatively cool summer sea temperatures and winters with relatively few large swell events. Such conditions are generally favorable for kelp resulting in stronger recruitment and an increase in canopy area of some beds in southern California. It is unknown if the increase in kelp productivity over the last few years will be sustained given the inherent inter-annual variability of the oceanographic environment. Furthermore, the effect of oceanographic conditions on kelp productivity is not uniform across all kelp beds. Certain beds in the Sanctuary that historically had an abundance of kelp remain mostly devoid of kelp and are dominated by echinoderms when studied during summer 2006. In these locations, kelp did not respond to a change in oceanographic conditions, indicating that other factors drive productivity.

Some marine mammal populations, such as gray whales and humpback whales, appear to have increased due to additional protection under the Marine Mammal Protection Act. Also refer to section 2.2 of the FEIS, Need for Action, for further details on the need for this action.

72. *Comment:* Many highly migratory and epipelagic species that traverse through the Sanctuary receive no benefit from site specific MPAs.

Response: Highly migratory and pelagic species may receive benefits from marine reserves even if they spend more time outside than inside marine reserves. Highly migratory and pelagic species fulfill an ecosystem role within marine reserves as predators on and forage for other species. Such species may benefit from fully protected zones if their prey is concentrated in a given area or if the zones include breeding, aggregating or resting grounds. Scientific research suggests that pelagic species gather in certain spots (usually banks or ridges), particularly during critical life cycle stages. Establishment of marine reserves in these areas is crucial, as the number and size of pelagic animals in the food web dictates

what other organisms thrive or decline. In other words, direct pressure on pelagic species causes indirect pressure on other species present in the ecosystem.

73. *Comment:* The DEIS has not addressed the ecosystem benefits of existing fishery management to achieve the Sanctuary's biodiversity goals.

Response: Section 2.2 (Need for Action) of the DEIS and FEIS generally discusses the ecosystem impacts of existing fishery management measures, while section 5.1 addresses this issue in more detail.

74. *Comment:* Deepwater sponges and corals should be included as species of interest.

Response: NOAA recognizes that there are other important species, such as deepwater sponges and corals, that are not included in the Species of Interest list. This section of the DEIS was written in 2000, preceding the discovery of these deepwater species sponges and corals. As such, there remains the possibility of other species and communities yet to be discovered.

75. *Comment:* NOAA should use the best available substrate information to update Figure 11.

Response: NOAA has updated the substrate information using United States Geological Survey (USGS) high resolution data to refine description of each individual marine zone where data is available. The USGS data could not be used to re-analyze the percentage of each habitat type included in each alternative because it is not available for the entire Sanctuary. Currently, 20% of the Sanctuary has been mapped with high resolution technology.

76. *Comment:* There is a lack of information on marine zone benefits in temperate waters. Based on data from tropical reef ecosystems, marine reserves may only benefit a small group of west coast nearshore resident species.

Response: Over the last five years, many peer-reviewed research articles have highlighted the effects of marine reserves on temperate marine ecosystems. A meta-analysis of temperate water marine reserves shows that many species tend to benefit from the establishment of marine reserves as measured by biomass, density and size of individuals as well as diversity of communities within their bounds. See Section 5.1.1 of the FEIS for a discussion of marine reserve benefits in temperate marine ecosystems.

77. *Comment:* The FEIS should address the benefits of the proposed marine reserves to southern sea otter recovery.

Response: There are no formal studies on the benefits of marine reserves to

southern sea otter recovery. Sea otter sightings in the zones are rare at this time. However, marine reserves are generally expected to increase the biomass of apex species within their bounds and could potentially benefit sea otters by increasing the populations of their prey, such as abalone, urchins, clams, and crabs.

78. *Comment:* Provide a detailed discussion of habitat patch replication for Alternative 1A.

Response: A discussion on habitat patch replication of Alternative 1 has been added to Section 3.3 in the FEIS.

79. *Comment:* Provide an analysis and discussion that describes the actual distances between protected habitats within an MPA for each alternative rather than the average distance.

Response: A discussion on connectivity has been added to Section 3.3, specifically, by providing a figure and discussion on the distances between individual marine zones for each alternative.

80. *Comment:* Provide more detailed information on the number and distances between patches of rocky substrate included in the MPA network.

Response: The discussion on connectivity has been updated to include distances between patches of rocky substrate.

81. *Comment:* Include Alternative 2 in the analysis of management considerations and in the table summarizing the alternatives' management considerations.

Response: As stated in the DEIS, the same management considerations for Alternative 1A apply to Alternative 2. A column has been added to Table 52 of the FEIS.

82. *Comment:* In Section 5.1 of the DEIS, NOAA claims adverse ecological impacts are "unlikely." If adverse ecological impacts are defined as declines in abundance, then this term should be redefined.

Response: NOAA considers "adverse impacts" as those impacts that are counter to the goals identified for this action, such as ensuring the long-term protection of Sanctuary resources by restoring and enhancing the abundance, density, population age structure, and diversity of the natural biological communities. NOAA recognizes that declines in abundance of certain species are an expected outcome of zone designation, but does not consider this in all cases to be an adverse ecological impact. For example, certain commercially targeted species may increase in abundance (e.g., spiny lobsters) due to reduced fishing pressure while their prey items decrease (e.g.,

purple urchin) because of an increase in lobster predation.

83. *Comment:* Language in Section 5.1 indicates that relatively little fishing activity occurs in the proposed marine zones. The statement does not account for the fact that other regulations currently restrict fishing in these areas. The discussion should clarify this point by adding "currently" before "relatively little activity."

Response: This recommendation has been added to the FEIS.

84. *Comment:* Provide references for assertions regarding the ecological impacts of the no-action alternative made in section 5.1.2 of the DEIS.

Response: Section 5.1.2 provides references regarding current and future anthropogenic stresses on California's coastal environment.

85. *Comment:* Add a reference for the recommended distances between marine zones.

Response: References for recommended distances between marine zones have been added.

86. *Comment:* The statement in the DEIS (section 5.1.6) that the spot prawn trawling prohibition is a response to declining catch and bycatch of bocaccio is incomplete and needs clarification. The trawl closure for spot prawns was implemented primarily due to concerns of potential damage to high relief habitat from roller gear and from overall levels of bycatch, particularly finfishes, relative to spot prawn catch.

Response: As the commenter states, the trawl closure for spot prawns was implemented primarily due to concerns of potential damage to high relief habitat from roller gear and from overall levels of bycatch, particularly finfishes, relative to spot prawn catch. The FEIS has been revised accordingly (see page 102 of the FEIS).

87. *Comment:* It is illogical to include potential impacts from the existing Channel Islands state marine zones as this impact should have already occurred.

Response: Under NEPA guidelines NOAA is required to consider cumulative impacts which include the impacts of the state MPAs in the analysis. Please see Table 25 of the FEIS, (Commercial Fishing and Kelp—Summary of Impacts by Alternative Step 1 Analysis), which clearly distinguishes the cumulative impact of the "Total New Proposal."

88. *Comment:* The kelp fishery should not be included in the analysis, since no kelp beds occur in the proposed MPAs.

Response: NOAA agrees there is no impact to kelp harvesting in the federal water marine zones (see Table 26 of the FEIS, which indicates the ex-vessel

value of kelp at 0% in the additional state and federal water areas). However, under its NEPA guidelines (NOAA Administrative Order 216-6), NOAA is required to consider cumulative impacts, which include the impacts to kelp harvesting in the existing state marine zones (Table 26 indicates the ex-vessel value for these areas is 5.48%).

89. *Comment:* Table 26 and Table 31 are confusing because the column headers say "value" but what the tables depict is actually "impact" to the fisheries. It would help to add another column just before the last one that lists the total value of each fishery.

Response: Ex vessel value is what the fishermen receive as revenue for their catch and only represents one category or portion of the total impact, i.e., the impact to fishermen. Other categories include income, employment, etc. To use the word "impact" in the table would be misleading, because the tables contain "maximum potential loss", i.e., all ex vessel value associated with the alternative, which is not expected as the final impact, as one would expect fishers to engage in mitigating behavior. The total value of each fishery is provided in Table 18 of the FEIS.

90. *Comment:* If \$24,233,406 is used as the total value of all fisheries (Table 24, Column 2), and \$3,012,974 is the total potential impact (Table 26 bottom of next to last column), then the percent total impact should be 12.43, and not 12.50 as listed at the bottom of the last column in Table 26. For Table 31, a similar problem occurs.

Response: The commenter's calculations are incorrect because they used the total baseline kelp and commercial fishing as the numerator, not the total of species for which the analysts have spatial data.

91. *Comment:* In 2003 to 2005, the landings for the port of Santa Barbara for the nearshore, shelf, and slope rockfish fisheries should not be considered as having "steep" declines. Shelf rockfish landings actually increased during this period.

Response: The commenter's estimate of what is sustainable for rockfish, and therefore the baseline for assessing socioeconomic impact, is still most likely an overstatement given the generally strong downward trend of the entire species group.

92. *Comment:* There isn't much fishing pressure in the proposed reserve areas, thus the economic impact of reserve establishment will be minimal.

Response: NOAA's analysis shows that the fishing activity in the marine zones is indeed minimal.

93. *Comment:* Further closures, particularly in the Smugglers' Cove/

Yellow Banks area, would result in economic harm to the sportfishing industry.

Response: There are no marine zones proposed for the Smugglers' Cove/ Yellow Banks area. Furthermore, the economic analysis associated with this action predicts the overall impacts to the sportfishing industry will be minimal. See section 5.2.3 of the FEIS.

94. *Comment:* The data used in NOAA's economic analysis are dated and there are additional sources now available that should be used to update the document.

Response: The estimates from Leeworthy, Wiley, and Stone (2005) are based on the best available information. Adding one or two years of recent data does not necessarily provide a better estimate. In statistics, this would be recognized as an "outlier" influencing the estimate of the mean.

More recent trends show that for some species the 2000–2003 averages are better measures of what could be sustainable than the 1996–1999 average used in prior analyses. Economic impacts were updated based on these new assessments of what is sustainable and can be found in Leeworthy, Wiley, and Stone (2005).

Although some of the information is several years old, it is the only spatially distributed data available. The distributions represent a historical average of areas fished over four to five year time periods and were provided by fishermen. For a more detailed socioeconomic impact analysis, see Leeworthy, Wiley, and Stone (2005).

95. *Comment:* The socioeconomic analysis underestimates the impacts of the preferred alternative to commercial fishing.

Response: It can be expected that there will be short-term losses to the commercial fisheries from Alternative 1. However, overall the impacts are small and the net cost or benefits to commercial fisheries are likely to be negligible. See also response #29 above.

96. *Comment:* Please clarify how the "Baseline person days of recreation activity" were determined and re-evaluate these statistics. Discrepancies between the ratio of private and charter boat dives, and consumptive vs. non-consumptive divers seem inaccurate. Commenter questions whether trips in Santa Barbara are less expensive than in Los Angeles.

Response: Baseline person-days of recreation activity were determined by a survey of all charter and party boat operations active in the CINMS. Private boat fishing and consumptive diving data were compiled from a variety of

sources (see Leeworthy, Wiley and Stone, 2005, Appendix B).

The data does not show discrepancies or relative price differences among geographic areas.

97. *Comment:* Clarify the meaning of "employment" in private boat diving.

Response: Employment related to private boat fishing and diving occurs through the expenditures paid by those engaged in the activity. This includes fuel, food, beverages, lodging, transportation, launch fees, etc. For each industry, there is an assumed ratio of sales and employment. Additionally, there is a multiplier effect, which accounts for additional employment of businesses supplying these businesses. For a complete explanation, see Leeworthy, Wiley, and Stone (2005).

98. *Comment:* The kayaking statistics seem inaccurate. Commenter claims that last year, for example, there were 7,000 kayaking days at Scorpion Anchorage, Santa Cruz Island.

Response: The kayaking statistics only include that activity associated with charter/party operations. The analysis does not include non-consumptive activity undertaken with private household boats. No institution estimates this activity. A project currently underway in the Socioeconomic Research & Monitoring Program for the CINMS is tracking the amount of this activity.

99. *Comment:* Make the tables easier to understand, and if appropriate presented as figures instead. If the numbers are estimates, add confidence intervals. If differences are significant, that should be noted with the level of significance. Clarify the time period and area in which the data was gathered.

Response: Figures would not provide the level of detail required to provide all of the necessary information. None of the estimates were derived through a stochastic process and therefore confidence intervals are not calculable. The time period is stated clearly in the text.

100. *Comment:* Commenter states that the negative perception toward Channel Islands MPAs by recreational fishermen has resulted in diminished recreational fishing effort and, consequently, lower revenues for businesses that serve recreational fishing interests in Santa Barbara and Ventura Counties.

Response: Scientifically credible and verifiable data regarding the statements made was not provided by the commenter and NOAA is not aware of any such data.

101. *Comment:* Add an expenditure that represents guiding fees for kayaking, e.g., a day kayaking trip is

approximately \$180.00 (including boat fee).

Response: Kayaking fees are included in the analysis. See page 31 of Leeworthy, Wiley, and Stone (2005) for all recreation expenditure information.

102. *Comment:* Add data from the National Economics Project, National Park Service, and Chris LaFranchi.

Response: The commenter did not provide NOAA with sufficient information to provide a response.

103. *Comment:* The impacts shown are partially an artifact of the proposed zoned areas being temporarily closed by fisheries management measures. Recommend noting that current EFH rules may change.

Response: In the Step 2 analysis in the FEIS, other regulations are discussed and how they might impact the estimates presented in the Step 1 analysis, which includes "maximum potential loss".

104. *Comment:* To protect the fisheries dependent infrastructure of Ventura Harbor, integrate into the NOAA action goals for sustainable fisheries, maintenance of long-term socioeconomic viability, and minimization of short-term socioeconomic losses to all uses and dependent parties.

Response: The goals for NOAA's action are guided by the NMSA and are clearly stated in section 2.0 of the FEIS as well as earlier in this preamble to the final rule.

105. *Comment:* Regulatory agencies should promote collaboration between competing interests to accomplish mutual fisheries goals.

Response: The SAC/MRWG process and State/Federal partnership and coordination with the PFMF have promoted collaboration between all interested parties. NOAA's goals for this action are not fisheries-specific.

106. *Comment:* Multiplier effects for the local community and the state economy must be factored into socioeconomic data for a fisheries management plan to be effective.

Response: NOAA's socioeconomic analysis includes indirect impacts to fisheries-related support services and businesses (multiplier effects). This methodology is detailed in Leeworthy, Wiley, and Stone (2005) on pages 13–16 for commercial fishing and 28–29 for the recreation industry. The analysis utilized multipliers created specifically for the commercial fishing industry. The multipliers were obtained from the Fishery Economic Assessment Model (FEAM). The FEAM was developed under contract to the PFMF, and is based on input-output models detailing inter-industry relationships. The FEAM

was designed for regional economic analysis and processing of the commercial fishery landings taking place within the county where the port is located.

107. *Comment:* Ex-Vessel value reported in Table 19 of the DEIS suggests that current regulations have effectively reduced the number of commercial fishing operators and show lower catch volumes. These trends translate into less fish harvested in the region. The percentage of vessels reporting catch from CINMS has declined from 79% in 2000 to an average of 47% in subsequent years.

Response: Table 19 shows a decline in vessels reporting catch from CINMS from 79 percent in 2000 down to 34 percent in 2002, followed by an increase between 2002 and 2003.

108. *Comment:* Commenter indicates there is a decrease of 86% in the cumulative ex-vessel value for the Ventura Harbor when comparing the study area totals for ex-vessel value by port in Table 17 (Commercial Fishing: Study Area Totals Ex Vessel Value by Port) to Table 27 (Commercial Fishing—Alternative 1 Study Area Totals, Ex Vessel Value by Port).

Response: The two tables are not showing the same estimate. Table 17 shows the study area total, while Table 27 shows the total in Alternative 1. The estimate in Table 17 did not “decrease” to the estimate in Table 27.

109. *Comment:* Ventura County has the highest economic dependency on activities in the CINMS, relative to all counties in the study area, as shown in Table 11 (Local/Regional Economic Dependence on CINMS Baseline Personal Income).

Response: While any impact may seem significant for those who experience it, the table also shows that the baseline personal income associated with all activities in CINMS for Ventura County is less than one quarter of one percent of personal income for the county.

110. *Comment:* Ensure that non-consumptive activities are sustainable in the CINMS by balancing and promoting collaboration between competing interests.

Response: NOAA believes that the CINMS Advisory Council provides an ideal forum for “competing” interests to discuss their respective issues regarding use of the Sanctuary and to provide input and advice on such matters to the CINMS superintendent.

111. *Comment:* Provide the sources of data for analysis of charter/party and private boating impacts.

Response: The source of the information is Leeworthy, Wiley, and

Stone (2005) and is cited at the beginning of sections 4.3.1 and 5.2 of the FEIS. In Leeworthy, Wiley, and Stone (2005), Appendix C documents all data used in the assessment for the recreation industry. A cumulative analysis of impacts, including the state areas of closure, is provided.

112. *Comment:* The socioeconomic analysis fails to adequately address displacement and impacts on recreational access, ignores the cumulative impact of existing state and federal closures, and projects unverified supply benefits.

Response: In the Step 2 analysis in the FEIS, the potential short- and long-term impacts to a fisherman’s ability to relocate fishing activity to areas outside marine zones is noted in qualitative terms using an ecological-economic model. It is not possible to estimate the net outcomes of how the ecological and economic processes will play out. For example, replenishment effects from the closed areas could offset the impacts of displacement or vice versa. The possibility of long-term losses to the recreational fishing industry by restricted access is acknowledged. Several ecological and socioeconomic monitoring efforts are underway, while others are planned. Monitoring will help determine what actual outcomes will occur, and the major stakeholders were involved in developing the priority monitoring items.

113. *Comment:* Please update Table 11 (Local/Regional Economic Dependence on CINMS: Baseline Personal Income) and Table 12 (Local/Regional Economic Dependence on CINMS—Baseline Employment) and the text explanations to reflect socioeconomic impacts to all direct and indirect incomes related to commercial and recreational fishing.

Response: The estimates in Tables 11 and 12 do reflect socioeconomic impacts to all direct, indirect, and induced incomes related to commercial and recreational fishing. This methodology is detailed in Leeworthy, Wiley and Stone (2005) on pages 13–16 for commercial fishing and 28–29 for the recreation industry.

114. *Comment:* Include Leeworthy, Wiley, and Stone (2005) as an appendix to the Final EIS.

Response: Leeworthy, Wiley, and Stone (2005) includes the sources of all the economic data used in determining the economic impacts. This report is available at <http://channelislands.noaa.gov/marineres/main.html>. As such, to avoid bulk, it was not added to the FEIS as an appendix.

115. *Comment:* The references and data that analyze the value and employment associated with “Total Consumptive Activities” (Table 1.3 and 1.4) ignore the additional value of businesses and services dedicated to supporting commercial and recreational fishing; recommend that the FEIS include the value of these businesses and support services in order to assess overall economic impact.

Response: The additional businesses and services dedicated to supporting commercial and recreational fishing are included in the estimates in Leeworthy, Wiley and Stone (2005) on Tables 1.3 and 1.4 through the multiplier process. This methodology is detailed on pages 13–16 for commercial fishing and 28–29 for the recreation industry.

116. *Comment:* The potential impact on ports and the potential economic costs of the percentage reductions in catch landings should be included.

Response: Throughout the analyses the percentage impacts on ex vessel value of the catch is presented. Ex vessel value of the catch is just pounds of catch times the price per pound and reflects both effects on supply and demand. There is no added value of listing percentage of pounds of catch separately.

117. *Comment:* The overall potential reductions in annual income and full and part time employment should include the values as percentages of the regional and local commercial fishing industries as well as the overall regional economy.

Response: The suggested percentages are in Table 25 of the FEIS.

118. *Comment:* Tables 27, 28, 29, 32, 33, and 34 (Commercial Fishing Impact) do not include the values of support services and businesses associated with commercial and recreational fishing.

Response: The impacts on ex value of the commercial fisheries are shown in Tables 27 and 32. The impacts on support services and businesses associated with commercial fisheries are included in Tables 33 and 34. Table 35 includes multiplier impacts for income and employment for recreational fishing as noted in footnotes 3 and 4 of Table 35.

119. *Comment:* Provide additional details on the socioeconomic, education, and outreach options that minimize or mitigate potential increased social costs and lawsuits, and increased costs of enforcement.

Response: The State of California and NOAA have developed ecological and socioeconomic monitoring plans to gauge the effects of the marine zones. In addition, the agencies have developed interpretive enforcement education

materials (e.g., brochures, signage) with affected stakeholders to better inform users of the marine zones. Effective communication of monitoring results through education and outreach and the application of interpretive enforcement tools may defray or avoid these social costs.

120. *Comment:* Partnering with the Sanctuary to manage the zoning network is very important.

Response: During the community phase and establishment of state marine zones, NOAA has relied on partners such as State of California, National Park Service, and U.S. Coast Guard, to implement the zone network. See the response to comment #2 for more information on this issue.

121. *Comment:* The CDFG supports Alternative 1C. It will work with FGC to fill any spatial gaps between the existing zones and the federal water zones.

Response: NOAA acknowledges the CDFG's position on the alternatives analyzed in the DEIS. See the response to comment #2 for more information on this issue.

122. *Comment:* The CDFG supports the proposed CINMS designation document amendments.

Response: NOAA acknowledges the CDFG's support for the proposed changes to the CINMS designation document.

123. *Comment:* NOAA's action may reduce conflicts between seabirds and fisheries, thus complementing NOAA's Office of Spill Prevention and Response seabird restoration efforts.

Response: Although this outcome is not a direct intent of this action, NOAA supports the Office of Spill Prevention and Response's seabird restoration efforts. Seabirds may become entangled or hooked on fishing gear and their feeding and breeding behaviors disrupted by fishing activity, such as fishing at night with bright lights.

124. *Comment:* Consultation with the State of California is required under Section 106 of the National Historic Preservation Act.

Response: NOAA has complied with all required consultations, including the National Historic Preservation Act.

125. *Comment:* A number of commenters expressed general support for marine reserves, marine conservation in general, and expanding the CINMS.

Response: NOAA acknowledges these comments.

126. *Comment:* The NOAA document should define short-term losses to both recreational and commercial fisheries, why losses will be short-term, and how the temporal nature of the impacts will be measured.

Response: As described in section 5.2.2.2 of the FEIS, short-term losses are defined as impacts over the next 1–5 years and long-term impacts are defined as 5–20 years. NOAA expects the projected maximum potential economic impacts to be primarily short-term because NOAA expects the affected community will be able to adapt to the new regulatory environment.

NOAA's socioeconomic monitoring plan calls for monitoring value of commercial fisheries catch (both inside and outside the CINMS and in state waters). Monitoring State-wide trends helps to separate out effects that have nothing to do with the CINMS marine reserves.

For the recreational fisheries, NOAA plans to monitor the following: (1) Spatial use patterns and intensity of use (total number of person-days of use); (2) charter/party boats using CDFG logbooks for Charter Passenger Fishing Vessels (CPFV); (3) private boats using the new California recreational fishing statistics data; (4) socioeconomic profiles of fishermen, including expenditure profiles; (5) net value or consumer's surplus; and (6) knowledge, attitudes and perceptions of management strategies and regulations.

For more information, see the Socioeconomic Monitoring Plan at <http://www.cinms.nos.noaa.gov/marineres/main.html>.

127. *Comment:* The expected socioeconomic impacts to the recreational and commercial fisheries and fishermen's income should be compared to that sector's total income by county and not to the total county income and regional data.

Response: The FEIS details how value of catch by each species/species group and the total across all species/species group are impacted as a percent of all commercial fishing catch from the CINMS. This is also done by port and the percentages present how the percent of the total ports value of catch is impacted by each alternative. See appendix tables in Leeworthy, Wiley and Stone (2005) for more information on the impacts by port and by county with the percents being the percents of the totals for each county.

For the recreation industry, greater detail is provided in Leeworthy, Wiley and Stone (2005) on the total impacts by county and percents of the total CINMS recreation impacted from the total CINMS recreation in the county.

128. *Comment:* As the focus of the action is Santa Barbara Channel, data relevant to this area, not the State as a whole, should be used. A statement is made that "almost 20 percent of those who use California's coastal areas for

recreation are interstate or international visitors * * *" Does this figure also apply to the more geographically limited Channel Islands area? Another statement is made that as numbers of people increase (referring to coastal population growth), so do the number of CINMS users. Are there any data to support this statement? Does the increase in CINMS use parallel the rates of increase elsewhere?

Response: Recognizing there is a paucity of data specific to the CINMS or the specific local surrounding area of Santa Barbara, Ventura, and Los Angeles counties, NOAA used the best available data to estimate the amount of activity in the CINMS.

There were two sources of time series data for assessing trends: NOAA Fisheries' Marine Fishing Statistics Survey (MRFSS), which has now been replaced with the California Recreational Fishing Statistics Program, and the U.S. Fish and Wildlife Service's National Survey of Hunting, Fishing and Wildlife Associated Recreation. Both estimate use for Southern California. Leeworthy, Wiley, and Stone (2005) summarize trends from these two sources (page 27) and the trends from the two sources were not consistent. From 1993–1999, MRFSS shows a downward trend, while from 1991–1996 (survey is done every five years) it shows an upward trend. From 1999–2002, MRFSS shows an upward trend.

A 1997 California Resources Agency report estimated that for all coastal areas 20 percent of recreation is done by out of State visitors. A Santa Barbara County Conference & Visitors Bureau and Film Commission report included an estimate that 20 percent of the visitors to Santa Barbara County were foreign visitors. There are not any surveys of the visitors to the CINMS to know if the same would hold true for recreational users of the CINMS. The statement that "as coastal population grows, so will number of CINMS users" is an extrapolation from an assessment of national trends for ocean and coastal (marine) recreation from the National Survey on Recreation and the Environment (NSRE) 2000. Year 2000 data were analyzed for demographic factors related to participation in marine recreation activities and equations used to forecast future participation for years 2005 and 2010. Generally, national participation rates (the percent of the U.S. population doing an activity) are projected to decline. However, the total number of participants is projected to increase because the population growth more than compensates for the lower participation rates. The statement

presumes these same trends may hold for California or the CINMS.

129. *Comment:* There is no quantitative evidence to show that non-consumptive activities will increase in the new zones, especially because all of the non-consumptive use occurs nearshore.

Response: The establishment of the new marine zones is expected to result in benefits to nonconsumptive recreational users. While there is no data currently available to directly estimate the magnitude of these benefits, NOAA conducted a benefits transfer/policy analysis simulation to quantify potential benefits. In addition, a two year study is now underway to help quantify these benefits. Non-consumptive uses in the proposed new zones are a relatively small percentage of the total non-consumptive uses that are concentrated in the nearshore waters of the Sanctuary. See section 5.2.5 of the FEIS for further discussion.

130. *Comment:* It is not clear how closures will affect the marine zones or how they will benefit the intent of those closures. The DEIS indicates that the proposed action would supplement the closures by "establishing temporally permanent zones," but no details are given and the statement is confusing.

Response: The action partially supplements the existing fishery closures, such as the Cowcod Conservation Area. The designation of marine reserves in or near areas protected by fishery closures adds another layer of protection, further ensuring that no fishing will occur on targeted species in the fishery closures and the adjacent areas protected by the marine reserves. Protection of the water column and all biophysical characteristics of marine reserves likely will enhance the recovery of targeted species protected by fishery closures by eliminating bycatch and further protection of habitats. Synergistic effects may result from protection by marine reserves of species and ecological processes consistent and adjacent to fishery closures.

131. *Comment:* Alternative 2 may cause negative financial impacts to coastal communities, recreational and commercial boating, and specifically, the ability of a local agency to repay existing state loans that are used for the construction and improvement of small craft harbors.

Response: The state marine zones have been in place for over three years and there is no evidence that the ability of local agencies to repay small harbor construction and improvement loans has been exacerbated due to impacts on recreational and commercial boating

from the state zones. Furthermore, there is a marginal increase in the estimated "maximum potential impact" to recreational and commercial boating with the extension of marine zones from the existing state marine zones into deeper waters of the Sanctuary with either Alternative 1 or 2.

132. *Comment:* The DEIS should specifically address Environmental Justice. The Council on Environmental Quality requires this inclusion, and the counties under consideration differ in income and social structure.

Response: See Section 6.7 of the FEIS for a discussion on Environmental Justice and all other required consultations.

133. *Comment:* The commercial fishing sector developed five alternatives that have lower economic impacts to both recreational and commercial fishermen than the preferred alternative, because a balance of marine conservation areas and marine reserves was used instead of marine reserves only.

Response: Marine conservation areas, where certain fishing activity and impacts to habitat and species still occurs, would not achieve the purpose and goals of the proposed project as well as marine reserves. However, NOAA has decided to establish one marine conservation area off of Anacapa Island to ensure consistency with the State of California's marine zone network, which also established a marine conservation area in that location. See section 3.1.2.2 of the FEIS. Also, see response #44 for the reason the one marine conservation area is included.

VI. Changes From Proposed Rule

NOAA made changes to the proposed rule issued on August 11, 2006 to respond to public comments. The changes are as follows:

In paragraphs (a) and (b) of § 922.73, the reference to the effective date of the final rule has been removed. The purpose of this provision was to ensure that changes made to NOAA's MSA regulations after the effective date of the final NMSA regulations would not affect the applicability of the NMSA regulations without public notice. NOAA has decided (1) to insert a reference to these NMSA regulations in NOAA's MSA regulations at 50 CFR part 660 as part of this final rulemaking, and (2) in future notices proposing to amend 50 CFR part 660, to advise the public and seek comment on any consequences as it relates to the regulations at 15 CFR 922.73 (e.g., that because 50 CFR part 660 is being amended to prohibit fishing in the water column of the marine

reserves, these activities would no longer be prohibited under 15 CFR 922.73; or because 50 CFR part 660 is being amended to allow the use of bottom contact gear, that activity would be prohibited under 15 CFR 922.73).

In paragraph (b)(3) of § 922.73, the exception to the prohibition on possessing Sanctuary resources has been broadened somewhat to ensure fish that were harvested in the marine conservation area are allowed to be in a person's possession regardless of the status of the person's vessel.

In paragraph (a)(1), (a)(3), (b)(1), and (b)(3), the phrase "any living or dead organism, historical resource, or other Sanctuary resource" has been replaced with "any Sanctuary resource, including living or dead organisms or historical resources" in each place it appears to clarify the application of the regulation to all Sanctuary resources.

The reference to the Painted Cave Marine Conservation Area in paragraph (b) of § 922.73 been removed. The Painted Cave Marine Conservation Area is completely within state waters of the Sanctuary, and is therefore (as discussed in the preamble) not subject to this rulemaking.

The coordinates for the marine reserves and marine conservation area in appendices B and C, respectively, have been modified so that only federal waters are included in this final rule. As discussed in the preamble, should NOAA decide to extend these marine reserves and marine conservation area into state waters of the Sanctuary, another final rulemaking action will further modify these coordinates as appropriate.

VII. Miscellaneous Rulemaking Requirements

A. National Marine Sanctuaries Act

Section 304 of the NMSA (16 U.S.C. 1434) requires the Secretary of Commerce in designating a sanctuary to submit Sanctuary designation documents to the United States Congress (Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate) and Governor of each state in which any part of the Sanctuary would be located. The designation documents are to be submitted on the same date the notice is published and must include the proposed terms of the designation, the proposed regulations, a draft environmental impact statement, and a draft management plan. The terms of designation may only be modified by the same procedures by which the original designation is made. In

accordance with Section 304, the appropriate documents have been submitted to the specified Congressional Committees and the Governor of California.

B. National Environmental Policy Act

In accordance with Section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)), and the provisions of NEPA (42 U.S.C. 4321–4370(a)), an FEIS has been prepared for the proposed action. Copies of the FEIS are available upon request to NOAA at the address listed in the **ADDRESSES** section. The FEIS notice of availability was published on April 20, 2007 (72 FR 19928). The 30-day period for the FEIS ended on May 21, 2007.

C. Executive Order 12866: Regulatory Impact

This rule has been determined to be not significant within the meaning of Executive Order 12866.

D. Executive Order 13132: Federalism

The Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, has consulted with appropriate elected officials in the State of California, as appropriate. Since 1999, NOAA has partnered with and supported the State in this effort. During the federal phase, NOAA has continually briefed the Secretary of Resources and the Director of the California Department of Fish and Game. NOAA also held numerous consultations with all California resource management agencies as required under section 303(b)(2) of the NMSA.

E. Regulatory Flexibility Act

In accordance with the requirements of section 604(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), NOAA has prepared a final regulatory flexibility analysis (FRFA) describing the impact of the proposed action on small businesses. Section 604(a) requires that each FRFA contain:

1. A succinct statement of the need for, and objectives of, the rule;
2. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
4. A description of the projected reporting, recordkeeping and other

compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. The FRFA is available upon request to NOAA at the address listed in the **ADDRESSES** section above. A summary of the FRFA follows.

Summary of the Final Regulatory Flexibility Act Analysis

1. *Statement of need.* A statement of why action by NOAA is being considered and the objectives of, and legal basis for, this final rule is contained in the preamble section of this final rule and is not repeated here.

2. *Summary of public comments.* Section V. in the preamble of this final rule contains a summary of all of the comments submitted to NOAA and NOAA's responses thereto. Some comments about the economic impact of the proposed action were submitted. Refer, for example, to comment numbers 86 through 133 for summaries of these comments and NOAA's responses thereto.

3. *Number of small entities affected.* The Small Business Administration has established thresholds on the designation of businesses as "small entities". A fish-harvesting business is considered a "small" business if it has annual receipts not in excess of \$3.5 million (13 CFR 121.201). Sports and recreation businesses and scenic and sightseeing transportation businesses are considered "small" businesses if they have annual receipts not in excess of \$6 million (13 CFR 121.201). According to these limits, each of the businesses listed below are considered small entities. (All analyses are based on the most recently updated and best available information.)

a. *Number of commercial fishing operations.* In 2003, there were 441 commercial fishing operations that reported catches from the CINMS. Total commercial fishing revenue from the CINMS was \$17.3 million in 2003.

b. *Number of consumptive recreational operations.* In 1999, there were 18 recreational fishing charter/

party boats operating in the CINMS. In 1999, there were 10 consumptive diving charter/party boats operating in the CINMS. Total reported 1999 gross revenue from these consumptive recreational activities was \$8.8 million. Total costs for 1999 were reported at \$8.4 million. After all costs were paid, the consumptive recreational activities resulted in \$420,000 in profit.

c. *Number of non-consumptive recreational operations.* In 1999, there were 8 whale watching operations, 7 non-consumptive diving operations, 4 operations that offered kayaking or island sightseeing activities, and 8 sailing operations, within the CINMS. Total reported 1999 gross revenue from these non-consumptive recreational activities was \$2.6 million. Total costs for 1999 were reported at \$2.5 million. After all costs were paid, the non-consumptive recreational activities resulted in \$82,000 in profit.

4. There are no new reporting, recordkeeping, or other compliance requirements.

5. Two alternatives plus a no-action alternative were considered. The no action (status quo) alternative would not establish marine reserves and marine conservation areas in the Sanctuary. Therefore there is no economic impact.

Alternative 1C, the proposed alternative, including both the existing state network and proposed extensions, would include approximately 110.5 square nautical miles of marine reserves and 1.7 square nautical miles of marine conservation areas for a total of 214.1 square nautical miles of the CINMS when combined with the existing state zones. The new proposed federal areas of Alternative 1C potentially impact 0.51% (approximately \$124,000) of ex vessel value of commercial catch in the CINMS. The total maximum potential loss to the income of commercial fishing businesses is 0.61% (\$440,000) and to the employment of commercial fishing businesses is 0.66% (13 jobs). For consumptive recreation in the CINMS, the estimated maximum potential loss associated with alternative 1 is \$935,000 (3.5%) in annual income and about 42 full and part-time jobs (3.7%) in the local county economies. For non-consumptive recreation in the CINMS, the estimated range of potential increases in income generated in the local county economies associated with alternative 1 is between \$337 and about \$380,000. The estimated range of potential increases in employment in the local county economies is between 0.02 and 19 full- and part-time jobs. Alternative 1C was chosen as NOAA's preferred alternative because it best accomplished the purpose and need of

furthering the protection of Sanctuary biodiversity while complementing the existing State-designated network. Alternatives 1A and 1B were rejected because they involved the establishment of federal marine reserves and marine conservation areas in state waters of the Sanctuary; which was opposed by the State of California.

Alternative 2, including both the existing state network and proposed extensions, would encompass approximately 275.8 square nautical miles of marine reserves and 12.1 square nautical miles of marine conservation areas for a total of 287.8 square nautical miles of the CINMS. Alternative 2 is larger than alternative 1, and proposes some different reserve areas not proposed in alternative 1. The new proposed federal areas of alternative 2 potentially impact 0.82% (approximately \$197,000) of ex vessel value of commercial catch in the CINMS. The total maximum potential loss to the income of commercial fishing businesses is 0.91% (\$650,000) and to the employment of commercial fishing businesses is 0.97% (19 jobs). For consumptive recreation in the CINMS, the estimated maximum potential loss associated with alternative 2 is \$1,300,000 (5.0%) in annual income and about 59 full and part-time jobs (5.2%) in the local county economies. For non-consumptive recreation in the CINMS, the estimated range of potential increases in income generated in the local county economies associated with alternative 2 is between \$748 and about \$841,000. The estimated range of potential increases in employment in the local county economies is between 0.04 and 44 full- and part-time jobs. Please refer to comment/response #1 for the reasons alternative 2 was rejected.

F. Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by OMB under control number 0648-0141. The public reporting burden for national marine sanctuary permits is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule would not modify the average annual number of respondents or the reporting burden for this information requirement, so a modification to this approval is not necessary. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for

reducing the burden, to NOAA (see **ADDRESSES**) and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

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

G. Unfunded Mandates Reform Act of 1995

This final rule contains no federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

List of Subjects

15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: May 18, 2007

John H. Dunnigan,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Dated: May 17, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries.

■ For the reasons stated in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 922—[AMENDED]

■ 1. The authority for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Revise § 922.70 to read as follows:

§ 922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of the waters off the coast of California of approximately 1,128 square nautical miles (nmi) adjacent to the following islands and offshore rocks:

San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (collectively the Islands) extending seaward to a distance of approximately six nmi. The boundary coordinates are listed in appendix A to this subpart.

■ 3. Redesignate §§ 922.71 and 922.72 as §§ 922.72 and 922.74, respectively.

■ 4. Add § 922.71 to subpart G of part 922 to read as follows:

§ 922.71 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Pelagic finfish are defined as: northern anchovy (*Engraulis mordax*), barracudas (*Sphyraena spp.*), billfishes (family *Istiophoridae*), dolphinfish (*Coryphaena hippurus*), Pacific herring (*Clupea pallasii*), jack mackerel (*Trachurus symmetricus*), Pacific mackerel (*Scomber japonicus*), salmon (*Oncorhynchus spp.*), Pacific sardine (*Sardinops sagax*), blue shark (*Prionace glauca*), salmon shark (*Lamna ditropis*), shortfin mako shark (*Isurus oxyrinchus*), thresher sharks (*Alopias spp.*), swordfish (*Xiphias gladius*), tunas (family *Scombridae*), and yellowtail (*Seriola lalandi*).

Stowed and not available for immediate use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

■ 5. Add § 922.73 to subpart G to read as follows:

§ 922.73 Marine reserves and marine conservation area.

(a) *Marine reserves.* Unless prohibited by 50 CFR part 660 (Fisheries off West Coast States), the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within a marine reserve described in Appendix B to this subpart:

(1) Harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including living or dead organisms or historical resources, or attempting any of these activities.

(2) Possessing fishing gear on board a vessel unless such gear is stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, including living or dead organisms or historical resources, except legally harvested fish on board a vessel at anchor or in transit.

(b) *Marine conservation area.* Unless prohibited by 50 CFR part 660 (Fisheries

off West Coast States), the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the marine conservation area described in Appendix C to this subpart:

(1) Harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including living or dead organisms or historical resources, or attempting any of these activities, except:

(i) Recreational fishing for pelagic finfish; or

(ii) Commercial and recreational fishing for lobster.

(2) Possessing fishing gear on board a vessel, except legal fishing gear used to fish for lobster or pelagic finfish, unless such gear is stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, including living or dead organisms or historical resources, except legally harvested fish.

■ 6. In § 922.74, as redesignated, revise paragraph (a) introductory text to read as follows:

§ 922.74 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct any activity within the Sanctuary prohibited under §§ 922.72 or 922.73 if such activity is either:

* * * * *

■ 7. Revise Appendix A to subpart G to read as follows:

**Appendix A to Subpart G of Part 922—
Channel Islands National Marine
Sanctuary Boundary Coordinates**

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

Point	Latitude (N)	Longitude (W)
1	33.94138	– 119.27422
2	33.96776	– 119.25010
3	34.02607	– 119.23642
4	34.07339	– 119.25686
5	34.10185	– 119.29178
6	34.11523	– 119.33040
7	34.11611	– 119.39120
8	34.11434	– 119.40212
9	34.11712	– 119.42896
10	34.11664	– 119.44844
11	34.13389	– 119.48081
12	34.13825	– 119.49198
13	34.14784	– 119.51194
14	34.15086	– 119.54670
15	34.15450	– 119.54670
16	34.15450	– 119.59170
17	34.15142	– 119.61254
18	34.13411	– 119.66024
19	34.14635	– 119.69780
20	34.15988	– 119.76688

Point	Latitude (N)	Longitude (W)
21	34.15906	– 119.77800
22	34.15928	– 119.79327
23	34.16213	– 119.80347
24	34.16962	– 119.83643
25	34.17266	– 119.85240
26	34.17588	– 119.88903
27	34.17682	– 119.93357
28	34.17258	– 119.95830
29	34.13535	– 120.01964
30	34.13698	– 120.04206
31	34.12994	– 120.08582
32	34.12481	– 120.11104
33	34.12519	– 120.16076
34	34.11008	– 120.21190
35	34.11128	– 120.22707
36	34.13632	– 120.25292
37	34.15341	– 120.28627
38	34.16408	– 120.29310
39	34.17704	– 120.30670
40	34.20492	– 120.30670
41	34.20492	– 120.38830
42	34.20707	– 120.41801
43	34.20520	– 120.42859
44	34.19254	– 120.46041
45	34.20540	– 120.50728
46	34.20486	– 120.53987
47	34.18182	– 120.60041
48	34.10208	– 120.64208
49	34.08151	– 120.63894
50	34.05848	– 120.62862
51	34.01940	– 120.58567
52	34.01349	– 120.57464
53	33.98698	– 120.56582
54	33.95039	– 120.53282
55	33.92694	– 120.46132
56	33.92501	– 120.42170
57	33.91403	– 120.37585
58	33.91712	– 120.32506
59	33.90956	– 120.30857
60	33.88976	– 120.29540
61	33.84444	– 120.25482
62	33.83146	– 120.22927
63	33.81763	– 120.20284
64	33.81003	– 120.18731
65	33.79425	– 120.13422
66	33.79379	– 120.10207
67	33.79983	– 120.06995
68	33.81076	– 120.04351
69	33.81450	– 120.03158
70	33.84125	– 119.96508
71	33.84865	– 119.92316
72	33.86993	– 119.88330
73	33.86195	– 119.88330
74	33.86195	– 119.80000
75	33.86110	– 119.79017
76	33.86351	– 119.77130
77	33.85995	– 119.74390
78	33.86233	– 119.68783
79	33.87330	– 119.65504
80	33.88594	– 119.62617
81	33.88688	– 119.59423
82	33.88809	– 119.58278
83	33.89414	– 119.54861
84	33.90064	– 119.51936
85	33.90198	– 119.51609
86	33.90198	– 119.43311
87	33.90584	– 119.43311
88	33.90424	– 119.42422
89	33.90219	– 119.40730
90	33.90131	– 119.38373
91	33.90398	– 119.36333
92	33.90635	– 119.35345
93	33.91304	– 119.33280
94	33.91829	– 119.32206

Point	Latitude (N)	Longitude (W)
95	33.48250	– 119.16874
96	33.44235	– 119.16797
97	33.40555	– 119.14878
98	33.39059	– 119.13283
99	33.36804	– 119.08891
100	33.36375	– 119.06803
101	33.36241	– 119.04812
102	33.36320	– 119.03670
103	33.36320	– 118.90879
104	33.47500	– 118.90879
105	33.48414	– 118.90712
106	33.52444	– 118.91492
107	33.53834	– 118.92271
108	33.58616	– 118.99540
109	33.59018	– 119.02374
110	33.58516	– 119.06745
111	33.58011	– 119.08521
112	33.54367	– 119.14460
113	33.51161	– 119.16367

■ 8. Add Appendix B to subpart G to read as follows:

**Appendix B to Subpart G of Part 922—
Marine Reserve Boundaries**

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

**B.1. Richardson Rock (San Miguel Island)
Marine Reserve**

The Richardson Rock Marine Reserve (Richardson Rock) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–1, and the following textual description.

The Richardson Rock boundary extends from Point 1 to Point 2 along a straight line. It then extends from Point 2 to Point 3 along a straight line. The boundary then extends along a straight line from Point 3 to the 3 nmi State boundary established under the Submerged Lands Act (3 nmi State boundary) where a line defined by connecting Point 3 and Point 4 with a straight line intersects the 3 nmi State boundary. The boundary then extends northwestward and then eastward along the 3 nmi State boundary until it intersects the line defined by connecting Point 5 and Point 6 with a straight line. At that intersection, the boundary extends from the 3 nmi SLA boundary to Point 6 along a straight line.

**TABLE B–1.—RICHARDSON ROCK
(SAN MIGUEL ISLAND) MARINE RE-
SERVE**

Point	Latitude	Longitude
1	34.17333 °N	120.60483 °W
2	34.17333 °N	120.47000 °W
3	34.12900 °N	120.47000 °W
4	34.03685 °N	120.52120 °W
5	34.03685 °N	120.60483 °W
6	34.17333 °N	120.60483 °W

B.2. Harris Point (San Miguel Island) Marine Reserve

The Harris Point Marine Reserve (Harris Point) boundary is defined by the 3 nmi State

boundary, the coordinates provided in Table B-2, and the following textual description.

The Harris Point boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary then follows the 3 nmi State boundary northwestward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B-2.—HARRIS POINT (SAN MIGUEL ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	34.20492 °N	120.38830 °W
2	34.20492 °N	120.30670 °W
3	34.10260 °N	120.30670 °W
4	34.15200 °N	120.38830 °W
5	34.20492 °N	120.38830 °W

B.3. South Point (Santa Rosa Island) Marine Reserve

The South Point Marine Reserve (South Point) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B-3, and the following textual description.

The South Point boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary southeastward until it intersects the line defined by connecting Point 4 and Point 5 along a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B-3.—SOUTH POINT (SANTA ROSA ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	33.84000 °N	120.10830 °W
2	33.84000 °N	120.16670 °W
3	33.86110 °N	120.16670 °W
4	33.84700 °N	120.10830 °W
5	33.84000 °N	120.10830 °W

B.4. Gull Island (Santa Cruz Island) Marine Reserve

The Gull Island Marine Reserve (Gull Island) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B-4, and the following textual description.

The Gull Island boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary then follows the 3 nmi State boundary westward until it intersects the line defined by connecting

Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B-4.—GULL ISLAND (SANTA CRUZ ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	33.86195 °N	119.80000 °W
2	33.86195 °N	119.88330 °W
3	33.92690 °N	119.88330 °W
4	33.90700 °N	119.80000 °W
5	33.86195 °N	119.80000 °W

B.5. Scorpion (Santa Cruz Island) Marine Reserve

The Scorpion Marine Reserve (Scorpion) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B-5, and the following textual description.

The Scorpion boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary then follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B-5.—SCORPION (SANTA CRUZ ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	34.15450 °N	119.59170 °W
2	34.15450 °N	119.54670 °W
3	34.10140 °N	119.54670 °W
4	34.10060 °N	119.59170 °W
5	34.15450 °N	119.59170 °W

B.6. Footprint Marine Reserve

The Footprint Marine Reserve (Footprint) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B-6, and the following textual description.

The Footprint boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary northeastward and then southeastward until it intersects the line defined by connecting Point 4 and Point 5 along a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B-6.—FOOTPRINT MARINE RESERVE

Point	Latitude	Longitude
1	33.90198 °N	119.43311 °W
2	33.90198 °N	119.51609 °W
3	33.96120 °N	119.51609 °W

TABLE B-6.—FOOTPRINT MARINE RESERVE—Continued

Point	Latitude	Longitude
4	33.95710 °N	119.43311 °W
5	33.90198 °N	119.43311 °W

B.7. Anacapa Island Marine Reserve

The Anacapa Island Marine Reserve (Anacapa Island) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B-7, and the following textual description.

The Anacapa Island boundary extends from Point 1 to Point 2 along a straight line. It then extends to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B-7.—ANACAPA ISLAND MARINE RESERVE

Point	Latitude	Longitude
1	34.08330 °N	119.41000 °W
2	34.08330 °N	119.35670 °W
3	34.06450 °N	119.35670 °W
4	34.06210 °N	119.41000 °W
5	34.08330 °N	119.41000 °W

B.8. Santa Barbara Island Marine Reserve

The Santa Barbara Island Marine Reserve (Santa Barbara) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B-8, and the following textual description.

The Santa Barbara boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary northeastward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line. The boundary then extends from Point 5 to Point 6 along a straight line.

TABLE B-8.—SANTA BARBARA ISLAND MARINE RESERVE

Point	Latitude	Longitude
1	33.36320 °N	118.90879 °W
2	33.36320 °N	119.03670 °W
3	33.41680 °N	119.03670 °W
4	33.47500 °N	118.97080 °W
5	33.47500 °N	118.90879 °W
6	33.36320 °N	118.90879 °W

**Appendix C to Subpart G of Part 9222—
Marine Conservation Area Boundary****C.1. Anacapa Island Marine Conservation Area**

The Anacapa Island Marine Conservation Area (AIMCA) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table C-1, and the following textual description.

The AIMCA boundary extends from Point 1 to Point 2 along a straight line. It then extends to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

**TABLE C-1.—ANACAPA ISLAND
MARINE CONSERVATION AREA**

Point	Latitude	Longitude
1	34.08330 °N	119.44500 °W
2	34.08330 °N	119.41000 °W
3	34.06210 °N	119.41000 °W
4	34.06300 °N	119.44500 °W
5	34.08330 °N	119.44500 °W

50 CFR CHAPTER VI**PART 660—[AMENDED]**

- 10. The authority for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

- 11. Revise § 660.2 to read as follows:

§ 660.2 Relation to other laws.

(a) NMFS recognizes that any state law pertaining to vessels registered under the laws of that state while operating in the fisheries regulated under this part, and that is consistent with this part and the FMPs implemented by this part, shall continue in effect with respect to fishing activities regulated under this part.

(b) Fishing activities addressed by this Part may also be subject to regulation under 15 CFR part 922, subpart G, if conducted in the Channel Islands National Marine Sanctuary

[FR Doc. E7-10096 Filed 5-23-07; 8:45 am]

BILLING CODE 3510-NK-P

PROPOSED ALTERNATIVE SCHEDULE FOR OBSERVER BYCATCH AND TOTAL MORTALITY REPORTING

Prepared by
NOAA Fisheries, Northwest Fisheries Science Center

Observer Data Release

Currently, the NWFSC's West Coast Groundfish Observer Program (WCGOP) releases data in two formats: fishery-specific observer data reports and an annual total mortality report. The first type of report is released in an annual, summarized format for each fishery after a number of data quality steps have been completed (as outlined in a report to the Council in June 2006). The bycatch and discard amounts and rates included in these reports reflect only data from observed trips. Following release of these reports, the data on which they are based are incorporated with other data, such as vessel logbooks and fish tickets, via bycatch models which are used to project catch and discard under alternative management scenarios.

The total mortality report is an annual summarized report that provides estimates of total fishing mortality for selected groundfish species or species groups during a calendar year. Observer data are expanded to unobserved vessels within each covered fleet, using data from fish tickets and, where available, logbooks. These estimates are combined with fish tickets and available discard assumptions or estimates for west coast fisheries not covered by the observer program, as well as research catches, in compiling total mortalities. The development of this report requires the availability of fish ticket and trawl logbook data, recreational catch estimates, and input from other sources, such as the Council's Groundfish Management Team and state agencies.

In August 2005, as per the recommendations of the Council's Groundfish Information Policy Committee and at the Council's request, the release of observer data (starting in 2006) has been scheduled to occur in the Fall of each year, to provide annual reporting in a manner that supports the needs of the two-year management cycle. The schedule that was provided to the Council outlined four observer reports being released in September 2006 and the total mortality report being released in January (Table 1). As stated above, after publicly posting the data, they are incorporated in bycatch models used to analyze management decisions.

Following the January 2007 release of the 2005 Total Mortality Report, which revealed a significant increase in the bycatch of canary rockfish in the trawl fishery, the Council requested that the observer program explore alternatives to decrease the time between data collection and release. Table 2 presents an alternative schedule for the release of observer data that could be initiated in January 2008. This schedule would divide each year into two data collection periods, January-June and July-December. Trawl and near-shore data reports and updating of bycatch models would be completed within 5-6 months of the end of each data period. The reports and updating the bycatch models for the sablefish-endorsed and limited entry Daily-Trip-Limit fleets would remain on an annual basis. Given current observer program resources and lags in the availability of fish ticket data, providing reports and model updates more frequently than twice per year is not feasible.

Pros and Cons of the Alternative Schedule

Pros:

- Complete observer data from the prior year's trawl and near-shore fisheries would be available to inform inseason management decisions at the June Council meeting.
 - The prior year's summer data are important for identifying trends during the season when the most shelf and near-shore effort occurs.
 - Greater opportunity to take action to avoid overfishing where significant increases in rates are observed in the previous year.
 - Potential for relaxing restrictions on landing healthy species, where downward trends in bycatch rates are observed.
- Earlier availability of the Total Mortality Report
 - 2006 report not expected until January 2008.
 - 2007 and later reports could be available in the Fall of the following year, which could benefit the biennial specification process in odd-numbered years and evaluation of inseason management for the following year in even-numbered years.

Cons:

- Increased work load on NWFSC staff to create reports and update models.
- June adoption of biennial specifications would coincide with the release of new observer data, which may differ significantly from data used in conducting the impact analyses of biennial specification alternatives.
- At present, observer data from the first four months of the current year can be included in model updates prior to the November Council meeting, and used to inform inseason management decisions for the early months of the following year. Although the alternative schedule includes release of data reports covering the first half of the year by November 1, it is less likely that model updates and analysis would be completed in time for use in evaluating possible November actions.
- Increased focus on the prior summer's data, as part of June inseason decisions, may increase the chances of overreactions to natural or sampling variability in bycatch rates, misinterpreting such changes as trends.

Table 1. Data release schedule followed by the NWFSC in releasing observer data for management use since 2006.

Timeline of Observer Data Release in 2006/early 2007					
Data set	1-Aug-06	1-Oct-06	1-Nov-06	1-Jan-07	1-Feb-07
Limited-entry trawl bycatch and discard rates	QA/QC Data 5/04 -4/06	Report posted 9/29/06	Update Bycatch Model		
Limited-entry Non-sable fixed gear bycatch and discard rates	QA/QC Data 9/04-4/06	Report posted 10/16/06	Update Bycatch Model		
Nearshore rockfish bycatch and discard rates	QA/QC Data 9/04 -4/06	Report posted 2/27/07	Update Bycatch Model		
Limited-entry Sablefish fixed gear bycatch and discard rates	QA/QC Data 9/04-4/06	Report posted 9/29/06	Update Bycatch Model		
2005 Total Mortality	QA/QC Data 1/05- 12/05			Report posted	Update Bycatch Model

Table 2. Alternative schedule for release of observer data and bycatch model updates for management use during 2008 and beyond.

2007	Complete by:											
	Jan	Feb	Mar	Apr	May	June	July	1-Aug	Sep	1-Oct	1-Nov	Dec
Data release type: LE Trawl bycatch and discard rates								QA/QC Data May06-Apr07		Post report	Update bycatch model	
LE Sablefish fixed gear bycatch and discard rates								QA/QC Data Apr06-Oct06		Post report	Update bycatch model	
LE 0 Tier fixed gear bycatch and discard rates								QA/QC Data May06-Apr07		Post report	Update bycatch model	
Nearshore fishery bycatch and discard rates								QA/QC Data May06-Apr07		Post report	Update bycatch model	
2008	Complete by:											
	Jan	1-Feb	Mar	1-Apr	1-May	1-Jun	July	Aug	Sep	1-Oct	1-Nov	Dec
Data release type: LE Trawl bycatch and discard rates				QA/QC Data May07-Dec07	Post report	Update bycatch model				QA/QC Data Jan08-Jun08	Post report	
LE Sablefish fixed gear bycatch and discard rates				QA/QC Data Apr07-Oct07	Post report	Update bycatch model						
LE 0 Tier fixed gear bycatch and discard rates				QA/QC Data May07-Dec07	Post report	Update bycatch model						
Nearshore fishery bycatch and discard rates				QA/QC Data May07-Dec07	Post report	Update bycatch model				QA/QC Data Jan08-Jun08	Post report	
Total Mortality 2006		Post report										
Total Mortality 2007											Post report	
2009	Complete by:											
	Jan	1-Feb	Mar	1-Apr	1-May	1-Jun	July	Aug	Sep	1-Oct	1-Nov	Dec
Data release type: LE Trawl bycatch and discard rates		Update bycatch model		QA/QC Data Jul08-Dec08	Post report	Update bycatch model				QA/QC Data Jan09-Jun09	Post report	
LE Sablefish fixed gear bycatch and discard rates				QA/QC Data Apr08-Oct08	Post report	Update bycatch model						
LE 0 Tier fixed gear bycatch and discard rates				QA/QC Data Jan08-Dec08	Post report	Update bycatch model						
Nearshore fishery bycatch and discard rates		Update bycatch model		QA/QC Data Jul08-Dec08	Post report	Update bycatch model				QA/QC Data Jan09-Jun09	Post report	
Total Mortality 2008											Post report	



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802- 4213

JUN 05 2007

150413SWR2006SF00311:MH

Mr. Donald Hansen, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

RECEIVED

JUN 07 2007

PFMC

Dear Mr. Hansen:

NOAA's National Marine Fisheries Service (NMFS) is in receipt of the Pacific Fishery Management Council's (Council) November 30, 2006, letter communicating its recommendation to issue the exempted fishing permit (EFP) for the drift gillnet fishery (DGN) for the 2007 fishing season. The proposed EFP was originally submitted by the Federation of Independent Seafood Harvesters to the Council for the 2006 fishing season but the permit was never issued by NMFS. The EFP would allow DGN fishing under specified conditions in the Pacific Leatherback Conservation Area (PLCA) from August 15 to November 15, 2007, when this area is normally closed to the DGN fishery.

NMFS recognizes that the DGN fishery is the primary fishery for swordfish and thresher sharks landed in west coast ports. To that extent, the agency was initially supportive of using the DGN EFP for generating new information pertaining to the question of whether the original time/area closure may have been excessive. However, a recent peer-reviewed scientific article by NMFS and California State University scientists presents the results of a study spanning over a decade of research that documents the importance of nearshore waters off the U. S. West Coast for foraging leatherback turtles¹. The study indicates that due to a combination of oceanographic processes supporting favorable habitat for leatherback turtle prey such as jellyfish, nearshore waters off California are a vital foraging area for some western Pacific leatherbacks from one of the two largest of the remaining breeding populations in the Pacific. The article also notes that similar processes that concentrate dense and larger jellyfish in nearshore retention areas have been reported off Oregon.

NMFS is concerned about threats to leatherback sea turtles within the migratory pathways to and from these apparently critical nearshore waters if the DGN EFP were to be issued. The PLCA includes waters utilized by leatherbacks traveling to and from these nearshore foraging areas. Currently, the migratory paths of leatherbacks are not sufficiently defined to allow for modification of the PLCA. Further, of the 23 observed

¹ Benson, S. R, K. A. Forney, J. T. Harvey, J. V. Carretta, and P. H. Dutton. In press. Abundance, distribution, and habitat of leatherback turtles (*Dermochelys coriacea*) off California, 1990-2003. Fishery Bulletin.

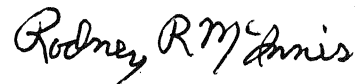


leatherback entanglements in the DGN fishery from 1990 through the present, 19 occurred within the PLCA. Sixty percent of the entanglements resulted in immediate mortality. Based on the condition reported by NMFS observers of those leatherbacks disentangled and released alive, NMFS estimates another 10 percent estimated mortality. Thus, NMFS approximates a total mortality rate for leatherbacks in the DGN fishery at 70 percent.

I am mindful of the innovative technical modifications the DGN industry has undertaken over the years to limit bycatch and reduce marine mammal bycatch including suspending nets 36 feet below the surface and adding pingers. While these efforts have effectively reduced marine mammal bycatch, there is no direct evidence suggesting that these measures have successfully reduced leatherback turtle bycatch.

In consideration of the potential for leatherback sea turtle mortalities that would result if the EFP were approved, NMFS does not intend to issue the proposed DGN EFP. At the same time, NMFS is aware of the strong demand for swordfish by U. S. consumers. Similarly, it also recognizes that efforts to inhibit U. S. fisheries targeting high market value species such as swordfish may only transfer ecosystem impacts to other, possibly less regulated fisheries and areas of the world. Consequently, NMFS encourages the Council to support those fisheries in its West Coast Highly Migratory Species (HMS) Fishery Management Plan that provide swordfish and other HMS managed species to U.S. consumers by utilizing areas where bycatch is minimized or using more conservative yet economically viable fishing methods. We will also continue to work with industry to find ways to assist them in adopting more conservative methods to meet U. S. demand for competitively priced fresh seafood while conserving protected species.

Sincerely,

A handwritten signature in cursive script that reads "Rodney R. McInnis".

Rodney R. McInnis
Regional Administrator

Cc: William Fox – SWFSC
Bob Lohn - NWR

June 2007



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

JUN 07 2007

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Mr. Donald Hansen, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place
Portland, OR 97220

Dear Mr. Hansen:

By this letter, I am notifying the Pacific Council that with the concurrence of the Assistant Administrator for Fisheries, I have approved Amendment 1 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). As you know, Amendment 1, in combination with the Western Pacific Council's Amendment 14, addresses overfishing of bigeye tuna Pacific-wide. The specific actions to end overfishing would be implemented by multilateral cooperation through appropriate regional fishery management organizations - the Inter-American Tropical Tuna Commission (IATTC) in the Eastern Pacific Ocean (EPO) and the Western and Central Pacific Fisheries Commission (WCPFC) in the Western and Central Pacific Ocean (WCPO). Taken together, proposed reductions in fishing mortality offered both by Amendment 1 and Amendment 14 would be expected to end overfishing of Pacific bigeye tuna. Amendment 1 also reorganizes the HMS FMP to create a more user-friendly document as the current FMP is combined with a lengthy Final Environmental Impact Statement.

Since Amendment 1 was transmitted to the National Marine Fisheries Service (NMFS), Section 406 of the Magnuson-Stevens Reauthorization Act (MSRA, Public Law 109-479) added section 304(i) to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This new section requires the Secretary to, among other things, in cooperation with the Secretary of State, immediately take appropriate action at the international level to end overfishing for fisheries that NMFS has determined: (a) to be overfished or approaching a condition of being overfished due to excessive international fishing pressure, and (b) for which there are no management measures to end overfishing under an international agreement to which the United States is a party. NMFS interprets "no management measures" to mean the absence of management measures that are adequate to stop overfishing for purposes of the MSA and its implementing regulations. NMFS has made a determination that both of these conditions are present, and therefore subsection 304(i) governs the MSA mandate to end overfishing in the case of Pacific bigeye tuna.

Section 304(i) does not provide that the "appropriate action" requirement necessitate preparing a plan, plan amendment or regulatory amendment. However, section 304(i) does not preclude a



council from preparing and submitting its recommendations to end overfishing through a plan or plan amendment. I believe that the recommendations for international management actions to end overfishing in Amendment 1 partially fulfills the requirement of section 304(i)(2)(b). The Council will still need to transmit its recommendations to the Secretary of State and to the Congress to be fully compliant with this section.

NMFS acknowledges and appreciates the Council's efforts in preparing Amendment 1. Amendment 1 outlines general principals that are to be adhered to when proposing management measures to the U.S. delegation to the IATTC intended to meet the goal of ending bigeye tuna overfishing. The Council's commitment to manage and conserve fishery resources at sustainable levels in the Pacific is to be commended.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rodney R. McInnis". The signature is fluid and cursive, with the first name "Rodney" and last name "McInnis" clearly distinguishable.

Rodney R. McInnis
Regional Administrator

cc:

PFMC – McIsaac
F – Hogarth, Rauch
F/SF – Risenhoover
GCSW – Feder
SWFSC - Fox