where marine mammals are preying on catch. Catch means fish or shellfish that has been hooked, entangled, snagged, trapped or otherwise captured by commercial fishing gear.

List of Fisheries means the most recent final list of commercial fisheries published in the **Federal Register** by the Assistant Administrator, categorized according to the likelihood of incidental mortality and serious injury of marine mammals during commercial fishing operations.

Minimum population estimate means an estimate of the number of animals in a stock that:

- (1) Is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and
- (2) Provides reasonable assurance that the stock size is equal to or greater than the estimate.

NMFS means the National Marine Fisheries Service.

Negligible impact has the same meaning as in § 228.3 of this chapter.

Net productivity rate means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

Nonvessel fishery means a commercial fishing operation that uses fixed or other gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch, and pen fisheries.

Observer means an individual authorized by NMFS, or a designated contractor, to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data, and collect biological specimens during commercial fishing activities.

Potential biological removal level means 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. The potential biological removal level is the product of the following factors:

- (1) The minimum population estimate of the stock;
- (2) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size; and
- (3) A recovery factor of between 0.1 and 1.0.

Regional Fishery Management Council means a regional fishery management council established under section 302 of the Magnuson Fishery Conservation and Management Act. *Serious injury* means any injury that will likely result in mortality.

Strategic stock means a marine mammal stock:

- For which the level of direct human-caused mortality exceeds the potential biological removal level;
- (2) Which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future:
- (3) Which is listed as a threatened species or endangered species under the Endangered Species Act of 1973; or
- (4) Which is designated as depleted under the Marine Mammal Protection Act of 1972, as amended.

Take Reduction Plan means a plan developed to reduce the incidental mortality and serious injury of marine mammals during commercial fishing operations in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

Take Reduction Team means a team established to review methods of reducing the incidental mortality and serious injury of marine mammals due to commercial fishing operations, in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

Vessel owner or operator means the owner or operator of:

(1) A fishing vessel that engages in a commercial fishing operation; or

(2) Fixed or other commercial fishing gear that is used in a nonvessel fishery.

Vessel of the United States has the same meaning it does in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

Zero mortality rate goal is the reduction of the annual number of incidental mortalities and serious injuries in each fishery to insignificant levels approaching a zero mortality and serious injury rate. A fishery will have reached this goal when it is responsible for, collectively with other fisheries, the annual removal of:

- (1) 10 percent or less of any marine mammal stock's potential biological removal level, or
- (2) more than 10 percent of any marine mammal stock's potential biological removal level, but that fishery by itself is responsible for the annual removal of 1 percent or less of that stock's potential biological removal level and does not seriously injure or kill species listed as endangered or threatened under the Endangered Species Act or depleted under the MMPA. In addition, those fisheries that kill or seriously injure declining, depleted, threatened, or endangered

stocks of marine mammals would have to be examined separately to determine that the incidental take is insignificant.

§ 229.3 Prohibitions.

- (a) It is prohibited to take any marine mammal incidental to commercial fishing operations except as otherwise provided in part 216 of this chapter or in this part 229.
- (b) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment.
- (c) It is prohibited to provide false information when registering for an Authorization Certificate, applying for renewal of the Authorization Certificate, reporting the taking of any marine mammal, or providing information to any observer.
- (d) It is prohibited to tamper with or destroy observer equipment in any way.
- (e) It is prohibited to intentionally lethally take any marine mammal in the course of commercial fishing operations unless imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported in accordance with the requirements of § 229.6.
- (f) It is prohibited to willfully discard any fishing gear at sea, in whole or in part.
- (g) It is prohibited to violate any regulation in this part.

§ 229.4 Requirements for Category I and II fisheries.

(a) General. For a vessel owner or crew members to lawfully incidentally take marine mammals in the course of commercial fishing operations in a Category I or II fishery, the owner or authorized representative of a fishing vessel or non vessel fishing gear must annually register for and receive an Authorization Certificate. The granting and administration of authorizations under this part 229 may be integrated and coordinated with existing fishery license, registration, or permit systems and related programs, wherever possible. These programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of authorizations is integrated into an existing program, NMFS will publish a notice in the Federal Register of where to register and efforts will be made to contact affected fishers via other appropriate means of notification.