

level of incidental mortalities and serious injuries of marine mammals. After February 29, 1996, the owner or authorized representative of a fishing vessel or nonvessel fishing gear (hereinafter vessel owner) which participates in a Category I or II fishery must register for and obtain a valid Authorization Certificate.

EFFECTIVE DATE: March 1, 1996.

ADDRESSES: A copy of the Environmental Assessment (EA) prepared for the section 118 implementing regulations may be obtained by writing to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Information and registration material for the region in which a fishery occurs, and reporting forms, may be obtained from the following addresses: NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298, Attn: Sandra Arvilla; NMFS, Southeast Region, 9721 Executive Center Drive North, St Petersburg, FL 33702; NMFS, MMAP, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115 Attn: Permits office; NMFS-PMRD, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99082.

FOR FURTHER INFORMATION CONTACT: Robyn Angliss, Office of Protected Resources, 301-713-2322; Douglas Beach, Northeast Region, 508-281-9254; Charles Oravetz, Southeast Region, 813-570-5301; James Lecky, Southwest Region, 310-980-4015; Brent Norberg, Northwest Region, 206-526-6140; Steven Zimmerman, Alaska Region, 907-586-7235.

SUPPLEMENTARY INFORMATION: Publication of the LOF, which places all U.S. commercial fisheries into three categories based on their levels of incidental mortality and serious injury of marine mammals, is required by section 118 of the MMPA. The following provides the history of this final 1996 LOF, clarification of the process used to classify fisheries, and a description of difference between the LOF published under section 114 of the MMPA and this final 1996 LOF.

History of the Final List of Fisheries for 1996

A proposed LOF for 1996 was published on June 16, 1995 (60 FR 31666) with proposed regulations implementing section 118. An EA was prepared concurrently with the development of the proposed

regulations and the LOF and was made available when the proposed regulations were published. The public comment period for the proposed regulations ended on July 31, 1995; the public comment period for the proposed LOF ended September 14, 1995.

The process used to develop the proposed and final rule implementing section 118 included many opportunities for public involvement, such as working sessions, public hearings, written comments, press releases, and a regulatory alert. Additional details on these activities are found in the preamble to the final regulations implementing section 118, published on August 30, 1995 (60 FR 45086).

During July 1995, NMFS held 10 public hearings at various locations throughout the country to receive comments on the proposed implementing regulations and proposed LOF. A total of 86 individuals attended these hearings, 28 of whom submitted oral comments on the proposed rule, LOF or both. NMFS also received 23 written letters of comment specifically on the LOF. Comments were received from fishers, fishing industry groups, environmental groups, animal rights groups, state departments of fisheries, other executive branch departments, and members of the general public.

This final LOF responds only to those public comments addressing the proposed LOF. Comments addressing the proposed implementing regulations for section 118 were included in the preamble to the section 118 final implementing regulations.

Definitions of Category I, II, and III Fisheries

The regulations implementing section 118 of the MMPA introduced a new three category fishery classification scheme (50 CFR part 229) based on 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 the rate, in numbers of animals per year, of serious injuries and mortalities due to commercial fishing relative to a stock's potential biological removal (PBR) level.

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 of such a stock, then all fisheries interacting with this stock are placed in Category III. Otherwise, these fisheries are subject to the next tier 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 in a given fishery is greater than 1 percent but less than 50 percent of the PBR level.

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

Tier 1, therefore, considers the cumulative fishery mortality and serious injury for a particular stock, while 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 final rule implementing section 118.

Differences Between the LOF Under Section 114 and the LOF Under Section 118

There are several key differences between the LOF required and prepared under expired section 114 and the new LOF required and prepared under section 118.

Under section 114, fisheries were classified based on the number of incidental takes of marine mammals. As defined in 50 CFR 216.3, takes include harassment. Under section 118, fisheries are to be classified based on the number of serious injuries and mortalities that occur incidental to that fishery. Also, under section 118 intentional lethal mortalities and serious injuries of marine mammals are prohibited. Thus, incidental or intentional harassment, or intentional lethal takes are no longer used to classify fisheries into a particular category.

The fishery classification criteria under section 114 were dependent on the rate of all marine mammal takes per 20 days. The criteria are now based on the annual rate of incidental, species-specific serious injury and mortality of marine mammals relative to a particular marine mammal stock's PBR level.

Under section 114, fisheries were typically classified primarily based on observer data and logbook data, although analogy to fisheries with similar gear types could be made. Under the new regulations pursuant to section 118, observer data, logbook data, stranding data, fishers' reports, anecdotal reports, and analogy are used to classify fisheries.

Both sections 114 and 118 require that the marine mammal species involved in interactions with each fishery be identified in the LOF. Under section 114, "involved" was interpreted broadly and included those marine mammals