vessel logbooks. The pilot whale mortality was not reported as coming from the long- or short-finned stock; however, the estimated total mortality of pilot whales exceeds the 50 percent of the PBR threshold for either long-finned or short-finned pilot whales. Therefore classification in Category I is warranted.

In addition, section 114 Marine Mammal Exemption Program (MMEP) logbook data support a Category I classification. Injuries and mortalities reported in the MMEP from 1990 through 1992 indicate that an average of nine pilot whales are injured or killed in longline gear each year. A variety of other marine mammal species, including but not limited to bottlenose dolphins, harbor porpoise, Risso's dolphins, and unidentified large cetaceans, have also been recorded as injured or killed. NMFS has also received sighting reports (both at sea and stranded) of whales carrying gear which may be attributable to the pelagic longline fishery. Species listed in these reports include humpback whale, sperm whale, long-finned pilot whale, and minke whale.

Comment 26: The Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet fishery, Long Island Sound inshore gillnet fishery, Delaware Bay inshore gillnet fishery, and North Carolina inshore gillnet fishery are currently, and incorrectly, listed as Category III fisheries. These fisheries interact on a sufficiently high level with humpback whales, minke whales, bottlenose dolphins and harbor porpoise that they should be moved to Category II.

Response: These inshore and bay fisheries were divided out from other mid-Atlantic coastal gillnet fisheries, because there were no observed takes in these areas, and because it is believed that there is a low probability of interaction. In the last several years, an interaction problem with small cetaceans has been identified in the mid-Atlantic based on observations of stranded animals. It is possible to identify evidence of gillnet interactions from a stranded specimen, but it is not yet possible to determine conclusively which gillnet fishery is responsible for the interaction unless the gear is recovered with the carcass, which is not usually the case. Based on the geographic distribution of strandings, marine mammal high-use areas, and concentrations of fishing gear, NMFS believes that the gillnet interactions in the mid-Atlantic occur largely in areas outside the ''inshore'' fishery division lines. Placement of these inshore fisheries into Category II is not warranted at this time. However, recent information (1994–1995) indicates that marine mammal incidental serious injury and mortality in some of these inshore fisheries may be higher than originally believed. These fisheries will be re-evaluated based on an examination of more recent stranding data when developing the next proposed LOF.

Comment 27: The pair trawl fishery should be renamed, as it occurs between Cape Hatteras and the Hague Line, and not in the Caribbean Ocean, the Gulf of Mexico, or off the Grand Banks of Newfoundland. The references to sharks should also be deleted from the name of the fishery, as sharks are not targeted and are, in fact, minimally represented in the bycatch. In addition, the number of participants in the fishery needs to be updated, as the number included in the proposed LOF is incorrect.

Response: NMFS agrees that the fishery should be renamed. Therefore, the fishery is now listed as ''U.S. Atlantic Large Pelagics Pair Trawl'' and the number of participants has been updated in the final LOF.

Comment 28: The average annual serious injury and mortality (extrapolated from observer data, 1992–93) of marine mammals incidentally taken in the pair trawl fishery appears to be highly inflated when compared to actual data, leading constituents to suspect that the data used to compile this information were not correct. Data from 1994 should be used in order for the LOF to be based on the best available information. Members of the fishing community have worked to change those aspects of the pair trawl fishery to reduce the number of marine mammal takes that occur incidental to the fishery, and none of those changes will have any significance in this final LOF. It is unfair to impose additional regulations on the fishing community without using every piece of data collected over all the years.

Response: See the response to Comment 25 for an explanation of how observer data are extrapolated to provide an annual estimate of the total serious injuries and mortalities of marine mammals in a commercial fishery.

Development of the new fisheries data reporting and analysis systems for the NMFS pair trawl observer program is ongoing. Observed serious injuries and mortalities from the pair trawl fishery in 1994 cannot be extrapolated to total kill numbers until the fishing effort data are available for the calculation. Data from the first half of 1994 were collected but were not available in the form necessary for the calculations used in developing the proposed LOF and cannot be finalized in time to allow the final LOF to be published before January 1, 1996. These data will be available for future consideration in making any necessary revisions for the next proposed LOF. Although serious injury and mortality of marine mammals incidental to the pair trawl fishery may have been below average in 1994, preliminary analysis of serious injury and mortality levels for 1995 suggests a bycatch increase and indicates an increase in the number of marine mammal species involved.

Comment 29: Data on marine mammal incidental mortalities and serious injuries from the 1994 pair trawl fishery have been made available to NMFS through reports and presentations in public forums. Because observer coverage was very high in 1994, this data set represents the most complete information for the pair trawl fishery to date. This information should be used to classify the pair trawl fishery.

Response: NMFS agrees that observer coverage was most intensive in 1994. However, incorporation of non-NMFS data presented in the aforementioned report would not result in reclassifying the pair trawl fishery as Category II. For example, if the non-NMFS information on the number of observed mortalities of the offshore stock of bottlenose dolphin and common dolphins are assumed to approximate the actual values, averaging these values with NMFS mortality and serious injury estimates from 1992 and 1993 results in average estimated serious injuries and mortalities of 53 and 22 animals, respectively. Both values exceed 50 percent of the PBR level for these stocks. In addition, the serious injury and mortality levels in 1995 seem to have increased substantially over the 1994 levels. To date, 25 marine mammals have been observed seriously injured or killed, including three dolphin species and long-finned pilot whales. Classifying this fishery as Category I is warranted.

Comment 30: In order to categorize a particular fishery, it is imperative that NMFS know how many vessels there are and where they fish. It is incumbent upon NMFS to make this number reflect reality to the best of its ability, because the extrapolation will make an erroneous result that could have extraordinary consequences. For example, for the pelagic longline fishery, NMFS has used 830 vessels to extrapolate the estimate of the ''takes'' for the fishery. According to the NMFS database, there were only 147 vessels that landed more than one swordfish in each of 5 or more months in 1993.