

Atlantic menhaden purse seine, mid-Atlantic coastal gillnet fishery). How is this population defined? Has it been shown to be reproductively isolated from the offshore dolphin stock?

*Response:* The final SAR states that there are "two hematologically and morphologically distinct bottlenose dolphin ecotypes that correspond to a shallow, warm water ecotype and a deep, cold water ecotype . . . ." (Blaylock, *et al.*, 1995).

*Comment 39:* The Gulf of Maine small pelagics surface gillnet fishery should be removed from Category 1. The EA states (p. 30) that this fishery no longer operates.

*Response:* Additional research on the Gulf of Maine small pelagics surface gillnet fishery indicates that, although there are few vessels participating, the fishery is still operational. This fishery operates in areas of high marine mammal concentrations. One report indicated that a white-sided dolphin was killed incidental to this fishery, and another report indicated that a humpback whale became entangled incidental to fishing operations and was later released by divers. Because there was a report of a mortality in this fishery, and because information is not available to justify a placement in Category I or III, the fishery is placed in Category II.

*Comment 40:* There is a small (5 boats) Gulf of Maine midwater trawl fishery for herring, separate from the Category II Atlantic midwater trawl fishery for squid and butterfish (620 boats). It should be listed as a Category III fishery. These boats also fish for herring in southern New England in the winter.

*Response:* In this final LOF, the trawl fishery for Atlantic herring has been renamed the "Northeast U.S. Atlantic Herring Trawl." This fishery is separated from fisheries in the Southern North Atlantic and Gulf of Mexico because the Atlantic herring species only ranges as far south as Cape Hatteras. This fishery is placed in Category III, as no incidental mortalities or serious injuries have been reported for this fishery, nor are incidental mortalities or serious injuries expected to occur incidental to this fishery.

*Comment 41:* A commenter supports placement of new fisheries in Category II until observer data or other information can be used to properly place the fishery, unless information already exists to place a new fishery in a different category.

*Response:* NMFS agrees. This approach was included in the final regulations implementing section 118.

*Comment 42:* According to the proposed LOF, the U.S. mid-Atlantic coastal gillnet fishery interacts with humpback whales (PBR level = 1). Published data indicate that stranded humpback whales in the mid-Atlantic may be interacting at a significant rate with these fisheries (Wiley *et al.*, 1995). This information indicates that this fishery should be classified as Category I, as it may be responsible for greater than 1 percent of the annual mortality in this stock of humpbacks.

*Response:* The PBR level for this humpback whale stock is currently set at 10 animals. The stranding records mentioned in Wiley (1995) demonstrate that stranded humpbacks in the mid-Atlantic have been entangled in commercial fishing gear. However, none of those humpback stranding records conclusively identify which fishery is responsible. One of the fundamental problems with linking a large whale entanglement to a particular fishery is that the whales are capable of carrying many kinds of gear great distances from the original point of entanglement. Reports received usually do not include gear identification information that would identify the location in which the gear was originally set.

Recent cetacean entanglement records in the mid-Atlantic have been linked to this fishery. These records suggest that, although the level of humpback entanglement in coastal gillnets in the mid-Atlantic is greater than 1 percent of PBR, there is no evidence to suggest that it is greater than 50 percent of PBR. Therefore, classification of this fishery as Category I is not warranted at this time.

*Comment 43:* There is no mention of interactions with northern right whales in the U.S. South Atlantic shark gillnet fishery. State officials concluded that a juvenile right whale that was entangled in netting that likely came from this fishery was subsequently killed by a large ship in 1994. Right whales should be added as an interacting stock and this fishery should be classified as a Category I fishery.

*Response:* A seriously injured juvenile right whale was observed swimming with its mother off the coast of Georgia. Marks on the animal closely resembled the types of marks observed on other right whales that have been entangled in gill nets. The juvenile whale had apparently also been hit by the propellers of a ship, as its flukes had been nearly severed. No gear was recovered from this animal and it is unknown whether the animal actually died, although its demise was highly likely based upon its injuries. The only gillnet fishery operating in the vicinity

was the Southeast U.S. Atlantic shark gill net fishery. Because this fishery's interaction with right whales is suspected but not confirmed, it is appropriate to place this fishery in Category II.

*Comment 44:* The North Atlantic bottom trawl fishery was classified as a Category III fishery despite observer data indicating a take of 62 percent of the PBR for striped dolphins. It is noted that there was minimal observer coverage (1 percent) and there is, therefore, a high coefficient of variation of the estimate. It is also possible with this high coefficient of variance that the mortality estimate is low. Furthermore, text in the proposed LOF states that the observers were not assigned to monitor marine mammal mortality but to "monitor fishery management related issues." Similar observer objectives on the Gulf of Maine gillnet vessels resulted in an underestimate of marine mammal bycatch. NMFS should reconsider the category for this fishery.

*Response:* A justification for categorizing the North Atlantic bottom trawl fishery in Category III was provided in the proposed LOF. Although concerns regarding some observer programs that focus on fishery monitoring have been raised, other observer programs with the same goals, such as those operating in the BSAI groundfish trawl fishery and the U.S. Atlantic large pelagics drift gillnet fishery, have provided important information on the level of marine mammal incidental serious injury and mortality. NMFS anticipates receiving additional marine mammal bycatch information on the bottom trawl fishery from observer programs directed at fish bycatch. This fishery will be re-evaluated for potential listing in Category II in a future proposed LOF. The trawl and gillnet fisheries have very different methods for hauling the gear and removing catch from the gear. It is much less likely that an observer will miss a marine mammal from a trawl haul than from a gillnet haul.

*Comment 45:* It may be premature to place the finfish aquaculture fishery in Category III based on a presumption that, since intentional killing is now prohibited, participants will not shoot seals. Media accounts of fishers shooting hundreds of seals belie the NMFS contention that the industry is likely to stop killing seals (justifying reclassification from Category II to Category III). Thus, the fishery should remain in Category II.

*Response:* The finfish aquaculture fishery was placed in Category II in the previous LOF, because intentional lethal takes of harbor seals and grey seals were