thought to occur ''occasionally.'' The authority to intentionally kill the seals was revoked by the 1994 MMPA amendments. A fishery categorization under section 118 cannot be based on the supposition that aquaculturists will violate the law. Anyone who intentionally kills marine mammals to protect fishing gear or catch will be subject to enforcement actions. This fishery will be re-evaluated in developing a future proposed LOF based on recent seal entanglement records from the fishery.

Comment 46: The Gulf of Mexico inshore gillnet fishery has not been classified correctly. There are over 40 discrete stocks of bottlenose dolphins in the Gulf of Mexico bay, sound and estuarine stocks, each with a PBR of between 0 and 3 animals per year. If this fishery were to be classified based on analogy to U.S. inshore fisheries in the mid-Atlantic, then it must be supposed that it is likely to interact with bottlenose dolphins (see Long Island sound inshore gillnet, Delaware Bay inshore gillnet and North Carolina inshore gillnet). As such, this fishery should be either a Category I or II fishery, as it would have to kill 0.03 animals per year or less to be placed in Category III if it is operating in an area coincident with any of the Gulf bays stocks. If this fishery is not operating in bays, sounds and estuaries (as could be the case in an ''inshore'' fishery) and is instead interacting with coastal stocks, then the PBR for the Western Gulf of Mexico coastal stock is 29 animals (0.2=1 percent of PBR); the PBR level for the northern Gulf of Mexico coastal stock is 35 (0.3=1 percent of the PBR level); and the PBR level for the Eastern Gulf of Mexico coastal stock is 89 (0.8=1 percent of the PBR level). Thus, the fishery would have to kill less than one of these animals each year in order to properly be placed in Category III. This too appears unlikely, given the propensity of gillnets to interact with bottlenose dolphins. It would seem that this fishery is totally inappropriate for Category III. This new fishery should be either Category I or Category II based on its potential to interact with bottlenose dolphins.

Response: Because NMFS has no documented, direct observations of serious injury or mortality to marine mammals in this fishery, it has been classified as category III by analogy with Atlantic inshore gillnet fisheries. However, as explained under responses to comments on those fisheries, NMFS believes there is potential for interaction with marine mammals in this fishery. Several bottlenose dolphins were incidentally caught in research-related tangle nets set for turtles between Texas and Louisiana between 1993 and 1995. These nets are similar to, and used like nets used in the inshore gillnet fishery. In addition, these nets were fully tended specifically to prevent marine mammal entanglements from occurring. This information and any additional information that can be obtained with respect to this fishery may be considered in developing a future proposed LOF.

Comment 47: The offshore monkfish bottom gillnet fishery, a new fishery to the proposed LOF for 1996, was placed in Category III based on an expectation that there will be a remote likelihood of interactions between bottom gillnet gear and marine mammals. While it is true that deep-set gear is less likely to kill marine mammals, a number of stocks (e.g., sperm whales) do use deep water areas, and gillnets are the gear type most likely to interact with any marine mammal species in the area. Until such time as it can be ascertained that interactions are unlikely, this new fishery should be placed in Category II to allow observer coverage and the gathering of more reliable information on interactions.

Response: This fishery may have been listed incorrectly as Category III in the proposed LOF. Because this fishery may have a high potential to take several cetacean species based on analogy with other shelf-edge fisheries such as the large pelagic drift gillnet fishery, NMFS will examine available data during the development of the next proposed LOF for reclassification of this fishery as Category II.

Since the publication of the proposed LOF, two other components of the monkfish fishery have been recognized by NMFS. The following provides a description of each component, and its treatment in this final LOF:

U.S. Atlantic Monkfish Trawl Fishery, Unknown Number of Participants

The monkfish trawl fishery harvests monkfish in deep waters off the Atlantic coast. Some participants in this fishery use a modified beam trawl; most use otter trawls. In addition, some participants in the scallop dredge fishery target monkfish using dredge gear during off-days for scallops as well as simultaneously with scallops. Because the target species, gear type, and geographic range of this fishery is unique, it is considered a new fishery for the purposes of the LOF. There are no documented reports of incidental serious injury or mortality of marine mammals in this fishery, nor are incidental serious injuries or mortalities expected. Accordingly, this fishery is placed in Category III in this final LOF.

Monkfish Gillnetting in the Gulf of Maine

Fishers participating in the New England multispecies sink gillnet fishery have targeted monkfish for several years. When targeting this species, a large mesh (10–14″ stretched mesh) sink gillnet is used, and the net is either tied down, or is set upright without floats using a polyfoam core floatline. Reports indicate that at least some fishers target monkfish in the Gulf of Maine near Jeffrey's Ledge. This fishery is an extension of the New England multispecies sink gillnet fishery, but has not been specifically included in the name of the fishery. Because of the increasing dominance of monkfish in the groundfish catch, the name of the New England multispecies sink gillnet fishery has been changed to the ''New England multispecies sink gillnet fishery (includes all species as defined in the Multispecies FMP, spiny dogfish, and monkfish)'' to clarify that sink gillnet fishers targeting monkfish are included.

Comment 48: The Gulf of Maine, U.S. mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon fishery is stated to have no documented interactions with marine mammals. This is incorrect. For example, NMFS records indicate that, on September 1, 1986 a humpback whale was reported by the U.S. Coast Guard off Nantucket shoals with tuna floats trailing; on November 14, 1986, the U.S. Coast Guard reported to NMFS that a right whale calf was seen with ''a tuna dart with line attached'' in its body; on July 7, 1989, a humpback whale was reported by the Cetacean Research Unit in Gloucester, MA, to have a tuna line from an identified Gloucester-based tuna boat around its left flipper and flukes, with the float attached. Furthermore, on August 29, 1995, a humpback whale was observed by both whale watching boats and the U.S. Coast Guard on Jeffreys Ledge, with a tuna boat anchor, line and float wrapped around and trailing from its body. While this most recent sighting may not yet have appeared in the main data base, the three earlier reports are from NMFS files. This information should be corrected in the LOF, and this fishery should be considered for reclassification.

Response: Because NMFS chose to use the most current data available, entanglement references prior to the Marine Mammal Exemption Program (MMEP) inception in 1989 were not used in developing the proposed LOF. This fishery may be considered for re-