

III trap/pot fisheries into a new generic trap/pot listing in Category II.

*Response:* NMFS agrees and the generic Category II "Atlantic mixed species trap/pot" fishery has been established.

*Comment 25:* One commenter stated that the newly-defined Atlantic mixed species trap/pot fishery should be addressed under the Atlantic Large Whale Take Reduction Plan (ALWTRP) and Harbor Porpoise Take Reduction Plan (HPTRP).

*Response:* NMFS added representatives of this fishery complex to the Atlantic Large Whale Take Reduction Team (ALWTRT) and raised this issue at the ALWTRT's meeting in April 2003. NMFS will be working with the ALWTRT to incorporate measures to address this fishery in the ALWTRP. With regard to the HPTRP, NMFS is not aware of any harbor porpoise interactions with trap/pot gear in recent years. The harbor porpoise (Gulf of Maine/Bay of Fundy stock) was listed as interacting with the fish trap/pot fisheries in the Northeast in the original LOF in 1989. However, NMFS is reevaluating that information during a review of older entanglement data and plans to update the list of interacting stocks in a future LOF based on a review of all available data. Based on data currently available, it is not appropriate to address trap/pot fisheries under the HPTRP at this time, although gillnet fisheries used to obtain bait for these fisheries may already be regulated under the HPTRP.

*Comment 26:* One commenter stated that NMFS provided no scientific justification for classifying the Atlantic mixed species trap/pot fishery as Category II other than "by analogy." The commenter objected to the imposition of registration costs that this classification would have on fishermen.

*Response:* Classification by analogy refers to the exercise of administrative discretion using relevant information such as fishing techniques, gears used, and stranding data, as described in the definition of a Category II fishery included in the final rule for the Section 118 implementing regulations (60 FR 45086, August 30, 1995, codified at 50 CFR 229.2) to determine whether a fishery results in "occasional" incidental mortality and serious injury of marine mammals.

The generic Northeast trap/pot fishery is already a Category II fishery pursuant to the 2001 LOF. For the 2003 LOF, NMFS has combined the generic Category III trap/pot fisheries in the Mid-Atlantic and Southeast with the generic Category II Northeast trap/pot fishery and redefined the fishery as the

Atlantic mixed species trap/pot fishery. The new Atlantic mixed species trap/pot fishery is appropriately classified as Category II based on known entanglement of cetaceans and pinnipeds in this gear type. The presence of trap/pot gear in areas and at times when these marine mammals are present is likely to result in occasional incidental mortality or serious injury of marine mammals.

Since implementation of the 2002 LOF, NMFS automatically registers all Atlantic fishers with current state or federal fishing permits for fisheries designated as Category I or II and has waived the registration fee for the Marine Mammal Authorization Permit. Therefore, there will be no economic burden associated with registration under the MMPA.

*Comment 27:* One commenter concurred with classifying Atlantic pot fisheries at least at the Category II level given that they include gears already known to incidentally take marine mammals. However, the commenter thought that Category I would be a more appropriate classification and said a lower Category is not warranted simply because the operation of Southeast trap/pot fisheries does not overlap with right whale distribution. The commenter said these fisheries entangle other species such as bottlenose dolphins and other small cetaceans and noted that this information was not provided in the LOF when justifying categorization of the fishery.

*Response:* Although the definition of a Category II fishery in 50 CFR 229.2 provides that NMFS may use a number of factors in determining whether incidental serious injury or mortality is "occasional," the definition of a Category I fishery does not provide the same level of flexibility for administrative discretion in determining what is "frequent." If new information becomes available suggesting that takes in the Atlantic mixed species trap/pot fishery results in a rate of incidental mortality or serious injury of 50 percent or greater of the PBR for a marine mammal stock, then it would be appropriate to consider elevation of those fisheries to Category I.

Data indicate that interactions between bottlenose dolphins and the spiny lobster and stone crab trap/pot fisheries in the Atlantic, Caribbean and Gulf of Mexico are rare. Additionally, NMFS has no data regarding interactions between bottlenose dolphins and other trap/pot fisheries in the Southeast or Mid-Atlantic. NMFS will continue to define and evaluate other trap/pot fisheries in the Atlantic, Caribbean, and Gulf of Mexico and

consider whether to reclassify them based on incidental mortality and serious injury of marine mammals in the 2004 LOF.

*Comments on the Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Longline Fishery*

*Comment 28:* One commenter stated that NMFS should update the lists of species incidentally killed or seriously injured in the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery based on data presented in the 2002 Stock Assessment Reports. The commenter specifically identified species that NMFS should review.

*Response:* Unlike the SARs, which focus on the most recent 5 years of data, the list of marine mammals incidentally killed or seriously injured in a given fishery in the LOF often includes all species or stocks known to experience mortality or serious injury in a given fishery and may also include species for which there are anecdotal or historical, but not necessarily current, records of interaction based on a variety of data types (e.g., logbooks, strandings data, observer data). This helps the agency better understand the nature and types of interactions that occur in each fishery. NMFS plans to evaluate how best to present historical versus current data on marine mammal-fishery interactions in future Lists of Fisheries and will make any necessary changes in the LOF tables once that evaluation is complete.

*Comment 29:* One commenter suggested that NMFS subdivide the pelagic longline fishery into three regional fisheries in the LOF to reflect variations in geographic region, target species, vessel size, area-specific regulations, and time of year. The commenter noted specifically that the Atlantic portion of the longline fishery should be divided into northern and southern components with a boundary line at Cape Hatteras, North Carolina.

*Response:* NMFS appreciates the information provided by the commenter on potential subdivisions of the pelagic longline fishery and notes that we addressed similar comments in the final LOF for 1997 (see Comment/Response 37 in 62 FR 33, January 2, 1997), the final LOF for 1999 (see Comment/Response 18 in 64 FR 9067, February 24, 1999), and the final LOF for 2001 (see Comment/Response 16 in 66 FR 42784, August 15, 2001). At this time, however, NMFS is not aware of any information to suggest that there is differential marine mammal incidental mortality/serious injury in the pelagic longline fishery along geographic lines. Therefore, subdivision of this fishery as