

federally regulated segment, the multispecies sink gillnet fishery, will be registered in the MMAP automatically through integration with the Federal permit process. Fishers who do not hold a Federal multispecies sink gillnet permit and who fish with sink gillnet for non-regulated species (dogfish and monkfish) are required to submit an MMAP registration form and processing fee to NMFS.

Federally permitted participants in the squid, mackerel, butterfish trawl fishery will be registered in the MMAP automatically through integration with the Federal permit process. Fishers who do not hold a Federal squid, mackerel, butterfish trawl permit and who trawl for those species are required to submit an MMAP registration form and processing fee to NMFS.

State and Federally permitted participants in the lobster trap/pot fishery will be registered in the MMAP automatically through integration with other permitting processes. The integrated registration process is expected to be completed prior to the effective date of this final rule. NMFS expects to issue information packages to permitted fishers by March 1, 1997.

For all participants in fisheries for which NMFS has integrated registration with permitting processes, the requirements to submit a registration form and fee and to post an MMAP decal on the vessel will be waived in 1997. A general certificate will be issued and will only be valid if presented with a valid state or Federal fishing permit.

All fishers who plan to participate in any other Category I and II fisheries in the NER must register under the MMAP by submitting a registration or renewal form and the processing fee to NMFS.

Reporting: Vessel owners or operators, or fishers (in the case of non-vessel fisheries), in Category I, II, or III, fisheries must comply with 50 CFR 229.6 and report all incidental mortality and injury of marine mammals during the course of commercial fishing operations to NMFS Headquarters or appropriate NMFS Regional Office. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured and must be reported. Instructions for submission of reports are found at 50 CFR 229.6(a).

Observers: Fishers participating in Category I and II fisheries may be required, upon request, to accommodate an observer aboard their vessels. Observer requirements may be found at 50 CFR 229.7.

Responses to Comments

NMFS received 15 comments on the proposed LOF. Many comments were lengthy and raised many points of concern. Key issues and concerns are summarized and responded to as follows:

General Comments

Comment 1: Timely data flow from the regional Fishery Science Centers is important. In some cases, incidental take data are 2 or more years behind. In addition, NMFS should focus on developing updated stock assessments along with revised Potential Biological Removal (PBR) levels. Failure to provide timely information on mortality or abundance can result in incorrect categorization of fisheries and unnecessary risk to marine mammal populations.

Response: NMFS agrees that the LOF should strive to classify commercial fisheries based on the best scientific data available and that NMFS should provide, when possible, updated mortality and serious injury estimates and updated PBR levels for each LOF.

Estimates of incidental mortality and serious injury that are based on observer data and used in the LOF are typically 2 years old. For instance, the proposed LOF for 1998, which will be developed in early 1997, will be based on mortality and serious injury estimates from 1996. This data lag is unavoidable because of the time required for entry and analysis of observer data and the time required to propose and finalize a new LOF. NMFS is aware that some estimates of mortality and serious injury of marine mammals in observed fisheries are more than 2 years old, will continue to work towards improving both the estimates and the timeline in which they are provided.

New draft Stock Assessment Reports (SARs), which include revised estimates of stock-specific and fishery-specific mortality and serious injury, and revised abundance estimates and associated PBR levels, are expected to be made available to the public in the near future. If final SARs are not available when the proposed LOF for 1998 is developed, NMFS will base the proposed LOF for 1998 on the information provided in the draft SARs.

Comment 2: Several commenters believed that the reclassification of a fishery from Category III to either Category II or I in the LOF would automatically result in the implementation of an observer program for that fishery.

Response: The final regulations implementing section 118 of the MMPA

require that vessels in fisheries classified in Category I or II to provide accommodations for observers if requested by NMFS (50 CFR 229.7(b)). Neither the regulations nor the MMPA require that NMFS place observers on all vessels participating in all fisheries classified in Category I or II. While information collected by observers aboard vessels usually provides the most accurate description of the level of serious injury and mortality to marine mammals incidental to commercial fishing operations, monitoring of commercial fishing operations may also be accomplished via alternative monitoring programs.

Comment 3: Annual reporting requirements need to be more specific about the condition of live marine mammal releases. NMFS needs to gather detailed information on "released unharmed," "injury," "serious injury," or "incidental mortality." A simple check box with "yes" or "no" to the question of killed or injured will continue to create problems with NMFS' assessment of the estimated level of "serious injury and/or incidental mortality" with any accuracy. NMFS has yet to determine what distinguishes an injury from a serious injury and how it relates to survivability of released marine mammals. Both NMFS and Congress acknowledge that encounters with marine mammals do not always result in "injury", "serious injury", or "incidental mortality".

Response: As stated by the commenter, NMFS recognizes that not all accidental encounters between commercial fishing vessels or gear and marine mammals result in injuries, serious injuries, or mortalities.

NMFS has provided considerable guidance as to what constitutes an injury, because fishers must be provided with criteria in order to determine whether an incidental interaction with a marine mammal constitutes an injury and whether a report of interaction needs to be submitted to NMFS. An injury is defined in 50 CFR 229.2 as

* * * a wound or other physical harm. Signs of injury to a marine mammal include, but are not limited to, visible blood flow, loss of or damage to an appendage or jaw, inability to use one or more appendages, asymmetry in the shape of the body or body position, noticeable swelling or hemorrhage, laceration, puncture or rupture of eyeball, listless appearance or inability to defend itself, inability to swim or dive upon release from fishing gear, or signs of equilibrium imbalance. Any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body will be considered injured regardless of the absence of any wound or other evidence of an injury.