

and have been known to swim up into rivers (e.g., Delaware, Susquehanna, and Potomac Rivers). Humpback whales, in particular, have often been sighted feeding very close to shore and inside harbors.

*Comment 25:* A tremendously large portion of the fishery operates in near shore, shallow waters, inside the documented range of the marine mammals mentioned in the Federal Register notice, making this an absurd and unnecessary administrative burden on these fishermen with registration requirements.

*Response:* See response to comment 24.

*Comment 26:* The inshore and offshore components should be combined into a single fishery. The differences in gear that is used in the inshore and offshore fishery for lobster is neither significant enough to affect the potential to kill or seriously injure marine mammals, nor is the marine mammal distribution such that either inshore or offshore gear has a greater likelihood of entangling marine mammals.

*Response:* The relative potential for serious injury or mortality of marine mammals in various types of lobster gear is unknown. Very little information is available that describes the behavior of the whales which resulted in entanglement, particularly for those entanglements that occur at depth. It may be possible to separate out certain fisheries that occur in bays or sounds if it can be determined that marine mammal species that are known to become entangled in lobster gear do not occur in those areas. However, that information is not available at this time. See response to Comment 25 for additional discussion.

*Comment 27:* The proposed LOF indicated that the decision to combine the inshore and offshore lobster pot fisheries is based on "new information received about the prosecution of the lobster fishery." Contrary to the implication in the Federal Register notice, the practical distinction between the offshore and inshore lobster pot fisheries is not based on the distinction between state waters and the EEZ. The proposed LOF is erroneous in stating that the number of pots and number and size of associated lines and surface gear increase as distance from shore increases.

*Response:* The description in the proposed LOF was intended to refer to the number of traps fished in a string and the number of traps fished per vessel, not to the total number of traps fished inshore versus offshore. NMFS recognizes that the size of the fleet that

fishes a considerable distance from shore in the EEZ is much smaller than that which fishes closer to shore in the EEZ and in state waters.

*Comment 28:* Although there are no sharp or practical distinctions between the gear types and vessel sizes used in the inshore lobster pot fishery and the offshore lobster pot fishery, there are sharp geographic distinctions that can be made, particularly in coastal New Hampshire and Maine. Because there has been only one right whale sighting inside the 100m bathymetric contour (excluding Jeffreys Ledge), the available data support a classification of Category III for the lobster fishery that occurs in the State waters of New Hampshire and Maine. In addition, although there are right whale aggregations at the Great South Channel and Cape Cod Bay/Stellwagen Bank/Jeffreys Ledge and in the lower Bay of Fundy and Browns Bank on the Scotian Shelf, there are large areas of inshore lobster grounds in between where the data suggest that the risk of serious injury/mortality from entanglement in lobster gear is non-existent.

*Response:* NMFS disagrees with the commenter's interpretation of right whale distribution. More than one right whale has been sighted inside the 100m contour. Although concentrations of right whales apparently only exist in certain areas of the Gulf of Maine, the whales likely transit many of the other areas at some point while moving between concentration areas. Information from satellite tracking indicates whales may cover large distances over short periods of time. See response to Comments 24 and 26 for discussion of geographical separation of the lobster fishery. Absent the evidence of right whale serious injury and mortality, the evidence of humpback and minke whale mortality and serious injury from 1990–1994 in the areas of Maine and New Hampshire to which the commenter refers would support a Category II listing rather than Category III.

*Comment 29:* Due to its geographical location and fishing methods employed, a practical operational distinction separates Long Island Sound from other waters where the lobster fishery is prosecuted. To remain consistent with plans for a separate fishery management area in Long Island Sound, and because right whales, humpback whales, and minke whales do not occur in Long Island sound, the lobster pot fishery in Long Island Sound should be separated from the U.S. mid-Atlantic Inshore Lobster Trap/Pot fishery and identified as a separate fishery in Category III. It makes no sense to have inshore Long

Island Sound lobster pot fishermen from Connecticut or New York comply with the same registration requirements as imposed on lobstermen who actually fish in New England waters inhabited by endangered cetaceans. Specifically, lobstermen fishing exclusively in the waters of Long Island Sound west of a line running from Watch Hill, RI, to Orient Point, NY, should be excluded from the Category I designation.

*Response:* See response to Comments 24, 25, and 26. NMFS does not have good information on the extent to which whales use Long Island Sound. However, humpback, minke, right, and fin whales have been sighted inside the line mentioned by the commenter. Most sighting surveys conducted in the western U.S. Atlantic Ocean did not cover inshore waters such as Long Island Sound, Delaware Bay, and Chesapeake Bay; rather, effort was concentrated on the continental shelf. NMFS may consider a geographic separation of the lobster fishery in a future LOF.

*Comment 30:* The lobster pot fishery should be restricted in areas of New England where endangered whales feed and mate. Recategorizing the territory that the whales inhabit from Category III to Category I would be beneficial to the endangered types of whales. It is a tragedy when any of these whales are entangled in trap lines, and enough have died already.

*Response:* Reclassification of the lobster fishery will not result directly in additional protection for marine mammals. Any such measures will be developed utilizing other management measures such as the promulgation of regulations in order to implement the Large Whale TRP.

*C. Comments on the Use of Alternate Management Regimes and Monitoring Programs.*

*Comment 31:* Several commenters supported the use of monitoring systems, such as enhanced stranding and disentanglement network reporting, or additional gear marking requirements, in lieu of the implementation of an observer program for the lobster pot fishery. Other alternatives include the use of shipboard and aerial surveys to monitor fishing activity and whale distributions, particularly in critical habitat areas and known summer ranges in the northern Gulf of Maine. In addition, observer programs are unlikely to result in an increased understanding of interactions between marine mammals and lobster gear, as many entanglements may occur when the vessel is not present.

*Response:* NMFS agrees that alternatives to traditional observer