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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 170601529-7529-01]

RIN 0648-BG90

2018 Annual Determination to Implement the Sea Turtle Observer Requirement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes a proposed Annual Determination (AD) for 2018, pursuant to its authority under the Endangered Species Act (ESA). Through the AD, NMFS identifies U.S. fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take fisheries observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate measures to prevent or reduce sea turtle takes and to implement the prohibition against sea turtle takes. Fisheries identified on the 2018 AD (see Table 1) will be eligible to carry observers as of January 1, 2018, and will remain on the AD for a five-year period until December 31, 2022.

DATES: Comments must be received by *[insert date 30 calendar days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2017-0058, by either of the following methods:

Federal e-Rulemaking portal. Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2017-0058, Click the “**Comment Now!**” icon, complete the required fields, enter or attach your comments.

Mail: Submit written comments to Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: Sea Turtle Annual Determination, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Alexis Gutierrez, Office of Protected Resources, 301-427-8402; Ellen Keane, Greater Atlantic Region, 978-282-8476; Dennis Klemm, Southeast Region, 727-824-5312; Dan Lawson, West Coast Region, 562-980-3209; Irene Kelly, Pacific Islands Region, 808-725-5141. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the Marine Mammal Protection Act (MMPA) List of Fisheries (LOF) may be obtained at <http://www.nmfs.noaa.gov/pr/interactions/fisheries/lof.html> or from any NMFS Regional Office at the addresses listed below:

- NMFS, Greater Atlantic Region, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930;
- NMFS, Southeast Region, Protected Resources Division, 263 13th Avenue South, St. Petersburg, FL 33701;
- NMFS, West Coast Region, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802;
- NMFS, Pacific Islands Region, Protected Resources Division, 1845 Wasp Blvd., Building 176. Honolulu, HI 96818.

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.*, NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*; North Pacific distinct population segment), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*; Northwest Atlantic distinct population segment), green (*Chelonia mydas*; North Atlantic, South Atlantic, and East Pacific distinct population segments), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as

endangered. Due to the inability to distinguish between populations of olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is the primary anthropogenic source of sea turtle injury and mortality in U.S. waters. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Section 11 of the ESA provides for civil and criminal penalties for anyone who violates the Act or a regulation issued to implement the Act. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception for incidental takes of sea turtles primarily because we lack information about fishery-sea turtle interactions.

The most effective way for NMFS to learn more about sea turtle-fishery interactions in order to implement the take prohibitions and prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) establishing procedures to annually identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176; August

3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, commercial or recreational, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the United States. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

NMFS will pay the direct costs for vessels to carry observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be required to carry observers, if requested, for a period of five years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; to evaluate whether existing measures are minimizing or preventing takes; and to implement ESA take prohibitions and conserve turtles.

Sea Turtle Distribution

Atlantic Ocean and Gulf of Mexico

Sea turtle species found in waters of the Atlantic Ocean and Gulf of Mexico include green, hawksbill, Kemp's ridley, leatherback, and loggerhead turtles. The waters off the U.S. east coast and Gulf of Mexico provide important foraging, breeding, and migrating habitat for these species. Further, the southeastern United States, from North Carolina through the Florida Gulf coast, is a major sea turtle nesting area for loggerhead, leatherback, and green turtles, and, to a much lesser extent, Kemp's ridley and hawksbill turtles.

Four sea turtle species occur seasonally in New England and Mid-Atlantic continental shelf waters north of Cape Hatteras, North Carolina: green, Kemp's ridley, leatherback, and

loggerhead. The occurrence of these species in these waters is largely temperature dependent. In general, some turtles move up the coast from southern wintering areas as water temperatures warm in the spring. The trend reverses in the fall as water temperatures decrease. By December, turtles that migrated northward return to southern waters for the winter. Hard-shelled species are most commonly found south of Cape Cod, Massachusetts. Leatherbacks regularly occur as far north in U.S. waters as the Gulf of Maine in the summer and fall.

Green turtles inhabit inshore and nearshore waters from Texas to Massachusetts, the U.S. Virgin Islands, and Puerto Rico. While foraging and developmental habitats also occur in the wider Caribbean, important feeding areas in Florida include the Indian River Lagoon, the Florida Keys, Florida Bay, Homosassa, Crystal River, Cedar Key, and St. Joseph Bay. The bays and sounds of North Carolina and Texas also provide important foraging habitat for green turtles.

In the Atlantic, hawksbills are most common in Puerto Rico and its associated islands and in the U.S. Virgin Islands. In the continental United States, the species is primarily recorded from south Texas and south Florida and infrequently from the remaining Gulf States and north of Florida. Kemp's ridleys occur throughout waters of the Gulf of Mexico and U.S. Atlantic coast from Florida to New England. The major nesting area for Kemp's ridleys is in Tamaulipas, Mexico, with limited nesting extending to the Texas coast.

Loggerheads occur throughout the Atlantic and Gulf of Mexico, ranging from inshore shallow water habitats to deeper oceanic waters. The largest nesting assemblage of loggerheads in the world is in the southeastern United States from Florida to North Carolina.

Adult leatherbacks are capable of tolerating a wide range of water temperatures and have been sighted along the entire continental coast of the United States as far north as the Gulf of

Maine and south to Puerto Rico, the U.S. Virgin Islands, and into the Gulf of Mexico. The southeast coast of Florida represents a significant nesting area for leatherbacks in the western North Atlantic.

U.S. Pacific Ocean

Leatherback sea turtles are consistently present off the U.S. west coast, usually north of Point Conception, California. They migrate to central and northern California from their natal beaches in the Western Pacific to feed on jellyfish during summer and fall. Leatherback turtles usually appear in Monterey Bay and California coastal waters during August and September and move offshore in October and November. Other observed areas of summer leatherback concentration include northern California and the waters off Washington through northern Oregon, offshore from the Columbia River plume.

Green, loggerhead, and olive ridley sea turtles are rarely observed in the U.S. west coast EEZ, but records show that all species have stranded in California and the Pacific Northwest. Two small resident populations of green turtles have been identified in the southern California Bight, associated historically with the warm water outflows from power plants in San Diego Bay and the San Gabriel River in Long Beach, California. In the eastern Pacific, loggerheads have been reported as far north as Alaska and as far south as Chile. Occasionally there are sightings reported from the coasts of Washington and Oregon, but most records are of juveniles off the coast of California. Based upon observer records and aerial observations, loggerheads travel into the southern California Bight during El Niño events (or warm water conditions similar to an El Niño). The majority of fishery interactions with loggerheads during El Niño conditions have occurred during the summer. Olive ridleys have been recorded stranded all

along the U.S. west coast. Olive ridleys are believed to use warm water currents along the west coast for foraging. The specific distribution of olive ridleys along the U.S. west coast is unknown at this time.

Sea turtles occur throughout the Pacific Islands Region including the State of Hawaii and the U.S. territories of Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI). Green and hawksbill turtles are most common in nearshore waters while leatherbacks, loggerheads, and olive ridleys occur in offshore pelagic waters.

Process for Developing an Annual Determination

Pursuant to 50 CFR 222.402, NOAA's Assistant Administrator for Fisheries (AA), in consultation with Regional Administrators and Fisheries Science Center Directors, develops a proposed AD identifying which fisheries are required to carry observers, if requested, to monitor potential interactions with sea turtles. NMFS provides an opportunity for public comment on any proposed determination. The best available scientific, commercial, or other information regarding sea turtle-fishery interactions; sea turtle distribution; sea turtle strandings; fishing techniques, gears used, target species, seasons and areas fished; and/or qualitative data from logbooks or fisher reports informs the determination. Specifically, this determination is based on the extent to which:

- (1) The fishery operates in the same waters and at the same time as sea turtles are present;
- (2) The fishery operates at the same time or prior to elevated sea turtle strandings; or
- (3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and
- (4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do

so.

The AA uses the most recent version of the annually published LOF as the comprehensive list of commercial fisheries for consideration. The LOF includes all known state and Federal commercial fisheries that occur in U.S. waters and on the high seas. However, in preparing an AD we do not rely on the three-part MMPA LOF classification scheme. In addition, unlike the LOF, an AD may include recreational fisheries likely to interact with sea turtles on the basis of the best available information.

NMFS consulted with appropriate state and Federal fisheries officials to identify which fisheries, both commercial and recreational, to consider. NMFS carefully considered all recommendations and information available for developing the proposed AD. This is not an exhaustive or comprehensive list of all fisheries with documented or suspected takes of sea turtles. For other fisheries, NMFS may already be addressing incidental take through another mechanism (*e.g.*, rulemaking to implement modifications to fishing gear and/or practices), may be observing the fishery under a separate statutory authority, or will consider including them in future ADs based on the four previously noted criteria (50 CFR 222.402(a)). The fisheries not included on the 2018 AD may still be observed under a different authority (*e.g.*, MMPA, MSA) than the ESA if applicable.

Notice of the final determination will publish in the *Federal Register* and individuals permitted for each fishery identified on the AD will receive a written notification. NMFS will also notify state agencies. Once included in the final determination, a fishery will remain eligible for observer coverage for a period of five years to enable the design of an appropriate sampling program and to ensure collection of sufficient scientific data for analysis. If NMFS determines a

need for more than five years to obtain sufficient scientific data, NMFS will include the fishery in the proposed AD again prior to the end of the fifth year.

The first AD was published in 2010 and identified 19 fisheries that were required to carry observers for a period of 5 years, through December 31, 2014, if requested by NMFS. On the 2015 AD, NMFS identified 14 fisheries, 11 were previously listed and 3 were newly listed. The 14 fisheries are currently required to carry observers for a period of 5 years, through December 31, 2019. The fisheries currently listed on the AD can be found at <http://www.nmfs.noaa.gov/pr/species/turtles/observers.htm>.

Fisheries Proposed for Inclusion on the 2018 Annual Determination

NMFS is proposing to include 2 new fisheries (both in the Atlantic Ocean/Gulf of Mexico) on the 2018 AD. The two fisheries, described below and listed in Table 1, are the Mid-Atlantic Gillnet fishery and the Gulf of Mexico Menhaden Purse Seine Fishery.

NMFS used the 2017 MMPA LOF (82 FR 3655; January 12, 2017) as the comprehensive list of commercial fisheries to evaluate for fisheries to include on the AD. The fishery name, definition, and number of vessels/persons for fisheries listed on the AD are taken from the most recent MMPA LOF. Additionally, the fishery descriptions below include a particular fishery's current classification on the MMPA LOF (*i.e.*, Category I, II, or III); Category I and II fisheries are required to carry observers under the MMPA if requested by NMFS. As noted previously, NMFS also has authority to observe fisheries in Federal waters under the MSA and collect sea turtle bycatch information.

Gillnet Fisheries

Sea turtles are vulnerable to entanglement and drowning in gillnets, especially when gear is unattended. The main risk to sea turtles from capture in gillnet gear is forced submergence (*i.e.*, drowning). Sea turtle entanglement in gillnets can also result in severe constriction wounds and/or abrasions. Large mesh gillnets (*e.g.*, 10-12 inch (in). (25.4-30.5 centimeter (cm)) stretched mesh or greater) have been documented as particularly effective at capturing sea turtles. However, sea turtles are prone to and have been commonly documented entangled in smaller mesh gillnets as well.

Mid-Atlantic Gillnet Fishery

NMFS proposes to include the Mid-Atlantic Gillnet Fishery on the 2018 AD given known interactions between sea turtles and this gear type and the need to collect more sea turtle bycatch data in state inshore gillnet fisheries. The Mid-Atlantic gillnet fishery was not listed in the 2015 AD, but the Chesapeake Bay Inshore Gillnet Fishery and Long Island Inshore Gillnet fishery were. By including the Mid-Atlantic gillnet fishery in the 2018 AD, we authorize observer coverage more completely along the mid-Atlantic region. The Mid-Atlantic gillnet fishery (estimated 3,950 vessels/persons) targets monkfish, spiny dogfish, smooth dogfish, bluefish, weakfish, menhaden, spot, croaker, striped bass, large and small coastal sharks, Spanish mackerel, king mackerel, American shad, black drum, skate spp., yellow perch, white perch, herring, scup, kingfish, spotted seatrout, and butterfish. The fishery uses drift and sink gillnets, including nets set in a sink, stab, set, strike, or drift fashion, with some unanchored drift or sink nets used to target specific species. The dominant material is monofilament twine with stretched mesh sizes from 2.5-12 in. (6.4-30.5 cm), and string lengths from 150-8,400 feet (ft) (46-2,560 meter (m)). This fishery operates year-round west of a line drawn at 72° 30' W. long. south to

36° 33.03' N. lat. and east to the eastern edge of the EEZ and north of the North Carolina/South Carolina border, not including Category II and III inshore gillnet fisheries (*i.e.*, Chesapeake Bay, North Carolina, Long Island Sound inshore gillnet, DE River inshore gillnet, Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower NY Bays) inshore gillnet fisheries). This fishery includes any residual large pelagic driftnet effort in the Mid-Atlantic and any shark and dogfish gillnet effort in the Mid-Atlantic zone described. The fishing occurs right off the beach (6 ft. (1.8 m)) or in nearshore coastal waters to offshore waters (250 ft. 76 m]).

Gear in this fishery is managed by several Federal FMPs and Interstate FMPs managed by the Atlantic States Marine Fisheries Commission. These fisheries are primarily managed by total allowable catch (TAC); individual trip limits (quotas); effort caps (limited number of days at sea per vessel); time and area closures; and gear restrictions and modifications.

This fishery is classified as Category I on the MMPA LOF, which authorizes NMFS to observe this fishery in state and Federal waters for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. This fishery was listed on the 2010 AD, and was eligible for observer coverage through 2014.

NMFS proposes to include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been well documented in this fishery, and NMFS intends to monitor this fishery, particularly the segment that occurs in the nearshore coastal waters of the mid-Atlantic and Delaware Bay.

Weir/Seine/Floating Trap Fisheries

Pound net, weir, seine and floating trap fisheries may use mesh similar to that used in gillnets, but the gear is prosecuted differently from traditional gillnets. Purse seines, weirs and floating traps also have the potential to entangle and drown sea turtles.

Gulf of Mexico Menhaden Purse Seine Fishery

NMFS proposes including the Gulf of Mexico Menhaden Purse Seine Fishery on the 2018 AD. The Gulf of Mexico Menhaden Purse Seine Fishery (estimated 40-42 vessels/persons) targets menhaden and thread herring. The fishery uses purse seine gear and operates in bays, sounds, and nearshore coastal waters along the Gulf of Mexico coast. The majority of fishing effort occurs in Louisiana and Mississippi, with lesser effort in Alabama and Texas state waters. Florida prohibits the use of purse seines in state waters. The fishery is managed under the Gulf States Marine Fisheries Commission Interstate Gulf Menhaden Fishery Management Plan.

This fishery is classified as Category II on the MMPA LOF, and NMFS has not yet included it on a previous AD. The fishery was observed in the early-1990s by Louisiana State University. Sea turtle strandings in the northern Gulf of Mexico have been documented during times and in areas near where the menhaden fishery operates. In 2011, NMFS operated a pilot observer program in this fishery to better understand the fishery's operations and evaluate the feasibility of observing for marine mammal and sea turtle bycatch. During the pilot observer program, two sea turtles were documented, one dead Kemp's ridley that was excluded by the large fish excluder, and one live unidentified turtle that was successfully released from the purse-seine net. Future observer efforts will build on the information obtained in 2011.

NMFS proposes to include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same

areas where the fishery operates, takes have been documented in this fishery, and NMFS intends to monitor this fishery.

Implementation of Observer Coverage in a Fishery Listed on the 2018 AD

As part of the proposed 2018 AD, NMFS has included, to the extent practicable, information on the fisheries and gear types to observe, geographic and seasonal scope of coverage, and any other relevant information. NMFS intends to monitor the fisheries and anticipates that it will have the funds to do so. After publication of a final AD, a 30-day delay in effective date for implementing observer coverage will follow, except for those fisheries where the AA has determined that there is good cause pursuant to the Administrative Procedure Act to make the rule effective without a 30-day delay.

The design of any observer program for fisheries identified through the AD process, including how observers will be allocated to individual vessels, will vary among fisheries, fishing sectors, gear types, and geographic regions and will ultimately be determined by the individual NMFS Regional Office, Science Center, and/or observer program. During the program design, NMFS will follow the standards below for distributing and placing observers among fisheries identified in the AD and among vessels in those fisheries:

- (1) The requirement to obtain the best available scientific information;
- (2) The requirement that observers be assigned fairly and equitably among fisheries and among vessels in a fishery;
- (3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and

(4) The need to minimize costs and avoid duplication, where practicable.

Vessels subject to observer coverage under the AD must comply with observer safety requirements specified in 50 CFR 600.725 and 600.746. Specifically, 50 CFR 600.746(c) requires vessels subject to observer coverage to provide adequate and safe conditions for carrying an observer and conditions that allow for operation of normal observer functions. To provide such conditions, a vessel must comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 300, 600, 622, 635, 648, 660, and 679) and possess a current United States Coast Guard (USCG) Commercial Fishing Vessel Safety Examination decal or a USCG certificate of examination. A vessel that fails to meet these requirements at the time an observer is to be deployed is prohibited from fishing (50 CFR 600.746(f)), unless NMFS determines that an alternative platform (*e.g.*, a second vessel) may be used or the vessel is not required to take an observer under 50 CFR 222.404. All fishermen on a vessel must cooperate in the operation of observer functions. Observer programs designed or carried out in accordance with 50 CFR 222.404 are consistent with existing NOAA observer policies and applicable federal regulations, such as those under the Fair Labor and Standards Act (29 U.S.C. 201 *et seq.*), the Service Contract Act (41 U.S.C. 351 *et seq.*), Observer Health and Safety regulations (50 CFR part 600).

Additional information on observer programs in commercial fisheries is on the NMFS National Observer Program's website: <http://www.st.nmfs.noaa.gov/observer-home/>; links to individual regional observer programs are also on this website.

Table 1 – State and Federal Commercial Fisheries proposed for inclusion on the 2018 Annual Determination.

Fishery	Years Eligible to Carry Observers
<u>Gillnet Fisheries</u>	
Mid-Atlantic gillnet	2018-2022
<u>Pound Net/Weir/Seine Fisheries</u>	
Gulf of Mexico menhaden purse seine	2018-2022

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. On December 29, 2015, we issued a final rule establishing a small business size standard of \$11 million in annual gross receipts (revenue) for all businesses primarily engaged in the commercial fishing industry (NAICS code 11411) for RFA compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the prior Small Business Administration standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016 (Id. at 81194). In addition to this gross revenue standard, a business primarily involved in commercial fishing is classified as a small business if it is independently owned and operated, and is not dominant in its field of operations (including its affiliates). Based on the information above, the Mid-Atlantic gillnet fishery has 343 small businesses and 23 large businesses operating in the Federal portion of the fishery. We believe those operating in the state portion of the fishery have revenue less than \$11 million a year and are, therefore, small businesses. None of the businesses in the Gulf of Mexico menhaden purse seine meet the small business classification.

NMFS has estimated that approximately 4,000 vessels participating in the two proposed fisheries listed in Table 1 would be eligible to carry an observer if requested. However, NMFS would only request a fraction of the total number of participants to carry an observer based on

the sampling protocol identified for each fishery by regional observer programs. As noted throughout this proposed rule, NMFS would select vessels and focus coverage in times and areas where fishing effort overlaps with sea turtle distribution. Due to the unpredictability of fishing effort, NMFS cannot determine the specific number of vessels that it will request to carry an observer.

If a vessel is requested to carry an observer, fishers will not incur any direct economic costs associated with carrying that observer. In addition, 50 CFR 222.404(b) states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and was not prepared.

The information collection for the AD is approved under Office of Management and Budget (OMB) under OMB control number 0648-0593.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) on the issuance of the regulations to implement this observer requirement in 50 CFR part 222, subpart D. The EA concluded that implementing these regulations would not

have a significant impact on the human environment. This proposed rule would not make any significant change in the management of fisheries included on the AD; and, therefore, this proposed rule would not change the analysis or conclusion of the EA. If NMFS takes a management action for a specific fishery, for example, requiring fishing gear modifications, NMFS would first prepare any environmental document required under NEPA and specific to that action.

This proposed rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule would not affect the conclusions of those opinions. The inclusion of fisheries on the AD is not considered a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, requiring modifications to fishing gear and/or practices, NMFS would review the action for potential adverse effects to listed species under the ESA.

This proposed rule would have no adverse impacts on sea turtles and may have a positive impact on sea turtles by improving knowledge of sea turtles and the fisheries interacting with sea turtles through information collected from observer programs.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: October 13, 2017.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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