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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 200114-0016]

RIN 0648-BI91

2020 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, request for comment.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes this proposed Annual Determination (AD) for 2020, 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 implement the prohibition against sea turtle takes. Fisheries identified on the 2020 AD (see Table 1) will remain on the AD for a five-year period from the effective date of the final rule and will be required to carry observers upon NMFS' request.

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-

2019-0082, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal:

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0082*;
2. Click the “**Comment Now!**” icon, complete the required fields;
3. 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: Jaclyn Taylor, 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:

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). This regulation specifies 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 regulation may result in civil or criminal penalties under the ESA.

NMFS will pay the direct costs for vessels to carry the required 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 appropriate observer coverage and 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 generally inhabit inshore and nearshore waters from Texas to Massachusetts, the U.S. Virgin Islands, and Puerto Rico.

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 the Annual Determination (AD)

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 determination is informed by 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. Specifically, fisheries are identified for inclusion on the AD 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 Marine Mammal Protection Act (MMPA) List of Fisheries (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 the AD we do not rely on the three-part MMPA LOF classification scheme. In addition, unlike the LOF, the AD may include recreational fisheries likely to interact with sea turtles based on 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. The proposed AD is not an exhaustive or comprehensive list of all fisheries with documented or suspected takes of sea turtles; rather it is intended as a mechanism to fill critical data gaps, where observer data is not currently sufficient for turtle data collection needs. NMFS will not include a fishery on the

proposed AD if that fishery does not meet the criteria for inclusion on the AD (50 CFR 222.402(a)).

For many 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 2020 AD may still be observed by NOAA fisheries observers under different authorities (*e.g.*, MMPA, MSA) than the ESA, if applicable.

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 another proposed AD, prior to the end of the fifth year.

On the 2015 AD, NMFS identified 14 fisheries, 11 of which were previously listed and three of which were newly listed. The 14 fisheries were required to carry observers for a period of 5 years, through December 31, 2019. The 2018 AD identified two additional fisheries and required them to carry observers through December 31, 2022. The fisheries included on the current AD are available at <https://www.fisheries.noaa.gov/national/bycatch/sea-turtle-observer-requirement-annual-determination>.

Fisheries Proposed for Inclusion on the 2020 Annual Determination

NMFS is proposing to include four fisheries in the Atlantic Ocean/Gulf of Mexico on the 2020 AD. The four fisheries, described below and listed in Table 1, are the Southeastern U.S. Atlantic and Gulf of Mexico shrimp trawl, Gulf of Mexico mixed species fish trawl, Chesapeake Bay inshore gillnet, and Long Island inshore gillnet. These four fisheries were listed previously on the 2015 AD for a five-year period ending December 31, 2019. Two other fisheries (Mid-Atlantic gillnet and Gulf of Mexico menhaden purse seine), which were listed in the 2018 AD for a five-year period ending December 31, 2022, will remain on the AD.

NMFS used the 2018 MMPA LOF (83 FR 5349; February 7, 2018) 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 in 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. Under the various authorities, NOAA's Northeast and Southeast Fisheries Observer Programs currently observe all four fisheries proposed for inclusion on the 2020 AD. The AD authority will work within the current observer programs, and allow NMFS the flexibility to further consider sea turtle data collection needs when allocating observer resources.

Trawl Fisheries

Interactions with trawl fisheries are of particular concern for sea turtles because forced submergence (*i.e.*, drowning) in trawl nets or any type of restrictive gear can lead to lack of

oxygen and subsequent death by drowning. Metabolic changes that can impair a sea turtle's ability to function can occur within minutes of forced submergence (Lutcavage *et al.*, 1997).

Turtle excluder devices (TEDs) are metal grids that fit into the cod end of the trawl net, with a top or bottom escape opening covered by a flap. The TED is intended to allow sea turtles to escape the net, while retaining the target catch, reducing incidences of sea turtle forced submergence. Currently, only otter trawl fisheries capable of catching shrimp and operating south of Cape Charles, Virginia, and in the Gulf of Mexico, as well as trawl fisheries targeting summer flounder south of Cape Charles, Virginia, in the summer flounder fishery-sea turtle protection area (50 CFR 222.102) are required to use TEDs.

Southeastern U.S. Atlantic, Gulf of Mexico Shrimp Trawl Fishery

NMFS proposes including the Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery on the 2020 AD. This fishery has an estimated 4950 vessels/persons and targets shrimp using various types of trawls. Skimmer trawls are used primarily in inshore/inland shallow waters (typically less than 20 ft. (6.1 m)) to target shrimp. The skimmer trawl has a rigid "L"-shaped or triangular metal frame with the inboard portion of the frame attached to the vessel and the outboard portion attached to a skid that runs along the seabed.

Skimmer trawl use increased in response to TED requirements for shrimp bottom otter trawls. Skimmer trawls currently have no TED requirement but are subject to tow time limits of 55 minutes from April 1 to October 31 and 75 minutes from November 1 to March 31. Skimmer trawls are used in North Carolina, Florida (Gulf Coast), Alabama, Mississippi, and Louisiana. There are documented takes of sea turtles in skimmer trawls in North Carolina and the Gulf of Mexico. All Gulf of Mexico states, except Texas, include skimmer trawls as an

allowable gear. In recent years, the skimmer trawl has become a major gear in the inshore shrimp fishery in the Northern Gulf and also has some use in inshore North Carolina. Louisiana hosts the vast majority of skimmer boats, with 3,651 licenses issued to skimmer trawlers in 2015. In 2015, Mississippi had approximately 150 active licensed skimmer trawlers and North Carolina had 75 licensed skimmer vessels in 2014 (NMFS 2016).

Skimmer trawl effort overlaps with sea turtle distribution, and, as noted above, sea turtle takes by skimmer trawls have been reported. Although skimmer trawls are subject to tow times, the magnitude of sea turtle takes in this fishery are not well understood. In response to high numbers of sea turtle strandings since 2010, fishery observer effort shifted from otter trawls to the inshore skimmer trawl fishery in the northern Gulf of Mexico during 2012 through 2015. A total of 2,699.23 hours were observed during that period. A total of 41 sea turtles were observed captured; we excluded 2 sea turtles, however, as their condition conclusively indicated they were previously dead before being observed in the skimmer trawl. NMFS has had limited observer coverage on skimmer trawl vessels in subsequent years.

Continued observer coverage to understand the scope and impact of sea turtle takes in this fishery is needed to implement the prohibitions of take, inform management decisions on what actions may be necessary to minimize and prevent sea turtle takes, and further sea turtle conservation and recovery.

The Southeastern U.S. Atlantic/Gulf of Mexico shrimp trawl fishery is classified as Category II on the MMPA LOF, and mandatory observer coverage in Federal waters began in 2007 under the MSA. The fishery is currently observed at approximately 1-2 percent of total fishing effort. The fishery was previously included in the 2010 AD and the 2015 AD, which

allowed for observer coverage to be shifted to skimmer trawls to specifically investigate bycatch of sea turtles. NMFS proposes to again include this fishery on the AD pursuant to the criteria identified at 50 CFR 222.402(a)(1), because sea turtles are known to occur in the same areas where the fishery operates and takes have been previously documented in this fishery.

Gulf of Mexico Mixed Species Fish Trawl Fishery

NMFS proposes including the Gulf of Mexico mixed species trawl fishery on the 2020 AD. This fishery has an estimated 20 vessels/persons and targets fish using various types of trawl gear, including bottom otter trawl gear targeting sheepshead. The Gulf of Mexico mixed species trawl fishery operates in state waters and is classified as Category III on the MMPA LOF. NMFS has not previously required vessels operating in this fishery to carry an observer under MMPA authority. This fishery was included in the 2015 AD but was not observed due to lack of resources. NMFS proposes to include this fishery in the 2020 AD pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including a fishery in the AD. This is because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in similar gear types, mainly the shrimp trawl fishery, and NMFS intends to monitor this fishery.

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. Sea turtle entanglement in gillnets can also result in severe constriction wounds and/or abrasions. Large mesh gillnets (*e.g.*, 7 inch (in) 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.

Chesapeake Bay Inshore Gillnet Fishery

NMFS proposes including the Chesapeake Bay inshore gillnet fishery on the 2020 AD. This fishery has an estimated 248 vessels/persons and targets menhaden and croaker using gillnet gear with mesh sizes ranging from 2.75-5 in (06.9 -12.7 cm), depending on the target species. The fishery operates between the Chesapeake Bay Bridge-Tunnel and the mainland and is managed by the Atlantic States Marine Fisheries Commission under the Interstate Fishery Management Plans for Atlantic menhaden and Atlantic croaker. Gillnets in Chesapeake Bay also target striped bass and spot.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD and the 2015 AD. To date, observer coverage in gillnet fisheries has primarily focused on federally-managed fisheries. There has been limited observer coverage in this fishery since 2010, with between 6 and 124 trips observed annually. Most recently, there were 14 trips observed in 2014, 39 in 2015, 49 in 2016, 124 in 2017, and 71 in 2018. This sample size is small, in terms of timing and areas that overlap with sea turtles, and additional information is needed to better understand sea turtle interactions with this fishery. In addition, Virginia continues to have the highest level of strandings for hard-shelled sea turtles in the Greater Atlantic Region. There is a need to better understand the gear fished in state waters and the extent to which this gear interacts with sea turtles. Given the risk of interaction and the limited data currently available on interactions, NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD. This is because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in similar gear, the fishery operates during a period of high sea turtle strandings, and NMFS intends to

monitor this fishery.

Long Island Inshore Gillnet Fishery

NMFS proposes including the Long Island Sound inshore gillnet fishery on the 2020 AD. This fishery includes all gillnet fisheries operating west of a line from the north fork of the eastern end of Long Island, New York (Orient Point to Plum Island to Fishers Island) to Watch Hill, Rhode Island (59 FR 43703, August 25, 1994). The estimated vessels/persons operating in the fishery is unknown. Target species include bluefish, striped bass, weakfish, and summer flounder.

This fishery is classified as Category III on the MMPA LOF and was included in the 2010 AD and the 2015 AD. There has been limited observer coverage in this fishery since 2010. To date, observer coverage in gillnet fisheries has primarily focused on federally-managed fisheries. However, the NMFS Northeast Fisheries Observer Program has observed a very limited number of trips in this fishery. There were four trips observed in 2014, three in 2015, 11 in 2016, six in 2017, and seven in 2018. This sample size is small, in terms of timing and areas that overlap with sea turtles, and additional information is needed to better understand sea turtle interactions with this fishery. There is a need to better understand the gear fished in state waters and the extent to which this gear interacts with sea turtles. Given the risk of interaction and the limited data currently available on such interactions NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD. This is because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in similar gear, the fishery operates during a period of high sea turtle strandings, and NMFS intends to monitor this fishery.

Implementation of Observer Coverage in a Fishery Listed on the 2020 AD

As part of the proposed 2020 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 support observer activities. The final rule implementing this proposed 2020 AD will include a 30-day delay in the date of effectiveness for implementing observer coverage, 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 upon publication of the final rule.

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. Pursuant to 50 CFR 222.404, 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 that the vessel is not required to take an observer under 50 CFR 222.404(b). 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.*), and the Observer Health and Safety regulations (50 CFR part 600).

Additional information on observer programs in commercial fisheries is located on the NMFS National Observer Program's website: <https://www.fisheries.noaa.gov/topic/fishery-observers>.

Table 1. State and Federal Commercial Fisheries proposed for inclusion on the 2020 Annual Determination.

Fishery	Years Eligible to Carry Observers
<u>Trawl Fisheries</u>	
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2020-2024
Gulf of Mexico mixed species fish trawl	2020-2024
<u>Gillnet Fisheries</u>	
Chesapeake Bay inshore gillnet	2020-2024
Long Island inshore gillnet	2020-2024

Classification

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Any entity with combined annual fishery landing receipts less than \$11 million is considered a small entity for purposes of the Regulatory Flexibility Act (50 CFR 200.2). Under this \$11 million standard, all entities subject to this action are considered small entities.

NMFS has estimated that approximately 5,218 vessels participating in the four 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 during times and areas where fishing effort overlaps with sea turtle distribution. Due to the unpredictability of fishing effort, NMFS cannot pre-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 from this requirement vessels that are too small to accommodate an observer. Because this proposed rule would not have a significant economic impact on a substantial number of small entities, 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. This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

In accordance with the Companion Manual for NOAA Administrative Order (NAO) 216-6A, NMFS preliminarily determined that publishing this proposed AD qualifies to be categorically excluded from further NEPA review, consistent with categories of activities identified in Categorical Exclusion G7 (“Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis”) of the Companion Manual, and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216-6A that would preclude application of this categorical exclusion. If NMFS takes a management action for a specific fishery, for example, requiring fishing gear modifications, NMFS would first prepare any environmental document specific to that action that is required under NEPA.

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 information collected from observer programs may have a positive impact on sea turtles by improving knowledge of sea turtles and the fisheries interacting with sea turtles.

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.

References

Lutcavage, M. E. and P.L. Lutz. 1997. Diving Physiology. In: P.L. Lutz and J. Musick (eds.) The Biology of Sea Turtles. ERC Press, Boca Raton, F.L. 432 pp.

Dated: January 15, 2020.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.