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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**[RTID 0648-XA417]**

**2021 Annual Determination to Implement the Sea Turtle Observer Requirement**

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

**ACTION:** Notice.

**SUMMARY:** The National Marine Fisheries Service (NMFS) is providing notification that the agency will not identify additional fisheries to observe on the 2021 Annual Determination (AD), pursuant to its authority under the Endangered Species Act (ESA or Act). 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 observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle bycatch in a given fishery, evaluate measures to prevent or reduce sea turtle bycatch, and implement the prohibition against sea turtle takes. Fisheries identified on the 2018 and 2020 ADs (see Table 1) remain on the AD for a 5-year period and are required to carry observers upon NMFS' request until December 31, 2022, and September 29, 2025 respectively.

**ADDRESSES:** Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**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, 206-526-4740; 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 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*), green (*Chelonia mydas*; Central West Pacific and Central South Pacific distinct population segments), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*; Northwest Atlantic Ocean distinct population segment), green (*Chelonia mydas*; North Atlantic, South Atlantic, Central North Pacific, 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.

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 (defined to include 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 that 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 bycatch 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, 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 5 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 sea turtle bycatch is occurring; to evaluate whether existing measures are minimizing or preventing bycatch; and to implement ESA take prohibitions and conserve and recover turtles.

#### **2021 Annual Determination**

Pursuant to 50 CFR 222.402(a), NOAA's Assistant Administrator for Fisheries, in consultation with Regional Administrators and Fisheries Science Center Directors, annually identifies fisheries 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.

NMFS is providing notification that the agency is not identifying additional

fisheries to observe on the 2021 AD, pursuant to its authority under the ESA. NMFS is not identifying additional fisheries at this time given lack of dedicated resources to implement new observer programs or expand existing observer programs to focus on sea turtles. The two fisheries identified on the 2018 AD (see Table 1) will remain on the AD for a 5-year period and are therefore required to carry observers upon NMFS' request until December 31, 2022. The four fisheries identified on the 2020 AD (see Table 1) will remain on the AD for a 5-year period and are therefore required to carry observers upon NMFS' request until September 29, 2025.

**Table 1. State and Federal Commercial Fisheries included on the 2018 and 2020 Annual Determinations**

Fishery	Years Eligible to Carry Observers
<b>Trawl Fisheries</b>	
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2020-2025
Gulf of Mexico mixed species fish trawl	2020-2025
<b>Gillnet Fisheries</b>	
Mid-Atlantic gillnet	2018-2022
Chesapeake Bay inshore gillnet	2020-2025
Long Island inshore gillnet	2020-2025
<b>Pound Net/Weir/Seine Fisheries</b>	
Gulf of Mexico menhaden purse seine	2018-2022

Dated: September 23, 2020.

**Donna S. Wieting,**

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