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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 140829733-5046-02]

RIN 0648- BE35

2015 Annual Determination to Implement the Sea Turtle Observer Requirement

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final Annual Determination (AD) for 2015, 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 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 2015 AD (see Table 1) will be eligible to carry observers as of January 1, 2015 and will remain on the AD for a five-year period. The fisheries listed on the final determination will be required to carry observers upon NMFS' request until December 31, 2019.

DATES: Effective April 18, 2015.

ADDRESSES: See SUPPLEMENTARY INFORMATION for a listing of all Regional Offices

FOR FURTHER INFORMATION CONTACT: Sara McNulty, 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/lof/ and information regarding Marine Mammal Stock Assessment Reports may be obtained at http://www.nmfs.noaa.gov/pr/sars/ or from any NMFS Regional Office at the addresses listed below:

- NMFS, Greater Atlantic Region, 55 Great Republic Drive, Gloucester, MA 01930;
- NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701;
- NMFS, West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802;
- NMFS, Pacific Islands Region, Protected Resources, 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 species 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), and olive ridley (Lepidochelys olivacea) sea turtles are listed as threatened, except for breeding colony populations of green turtles in Florida and on the Pacific coast of Mexico, and 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 green and 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, 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). The purpose of the sea turtle observer requirement and the AD is ultimately to implement ESA sections 9 and 4(d), which prohibit the incidental take of endangered and threatened sea turtles, respectively, and to conserve sea turtles. Section 11 of the ESA provides for civil and criminal penalties for anyone who violates a regulation issued pursuant to the ESA, including regulations

that implement the take prohibition, as well as for the issuance of regulations to enforce the take prohibitions. NMFS may grant exceptions to the take prohibitions for activities that are covered by 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 about sea turtle-fishery interactions, in order to implement management measures 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 eligible to be observed 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; evaluate whether existing measures are minimizing or preventing takes; and develop ESA management measures that implement the prohibitions against take and that conserve sea turtles.

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, developed a proposed AD identifying which fisheries are required to carry observers, if requested, to monitor potential interactions with sea turtles. NMFS provided an opportunity for public comment on any proposed determination. The determination is based on 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. The AD 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.

For the 2015 AD, the AA used the most recent version of the annually published 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

classification scheme used for fisheries on the LOF. In addition, unlike the LOF, the 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, should be considered on the AD. Recommendations were received from six state agencies. Gear types recommended for consideration included gillnet, trawl, trap/pot, pound net, seine, and hook-and line. NMFS considered all recommendations carefully in developing the proposed list of fisheries to be included. Although the comments and recommendations provided to NMFS by states were based upon the best available information on their fisheries, NMFS received more recommendations for fisheries to include on the 2015 AD than is practical based on the four previously noted criteria (50 CFR 222.402(a)). The AD is not an exhaustive or comprehensive list of all fisheries with documented or suspected takes of sea turtles. For some 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)). Note also that fisheries not included on the 2015 AD may still be observed under a different authority than the ESA (e.g., MMPA, MSA).

Notice of the final determination will be published in the Federal Register and made in writing to individuals permitted for each fishery identified on the AD. NMFS will also notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and other means, as appropriate. 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 that more than five years are needed to obtain sufficient scientific data, NMFS will include the fishery in the proposed AD again prior to the end of the fifth year.

In the 2010 AD, NMFS identified 19 fisheries that were required to carry observers for a period of five years, through December 31, 2014, if requested by NMFS. Because of a lack of resources to implement new observer programs or expand existing programs, NMFS has not identified any additional fisheries on the AD since 2010. Eleven of the 19 fisheries included on the 2010 AD have been included on the 2015 AD, and are described further below. The remaining eight fisheries were summarized in the proposed 2015 AD (October 22, 2014, 79 FR 63066).

Implementation of Observer Coverage in a Fishery Listed in the 2015 AD

As part of the 2015 AD, NMFS has included, to the extent practicable, information on the fisheries or gear types to be observed, geographic and seasonal scope of coverage, and any other relevant information. For each of these fisheries or gear types, NMFS intends to monitor the fishery and anticipates that it will have the funds to do so. After publication of this final AD, a 30-day delay in the 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 would 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 or observer program. During the program

design, NMFS will be guided by the following standards for distributing and placing observers among fisheries identified on 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 at 50 CFR 600.725 and 50 CFR 600.746. Specifically, 50 CFR 600.746(c) requires vessels 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 on the vessel 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 determines that a vessel with inadequate or unsafe facilities is not be required to take an observer under 50 CFR 222.404. In any case, all persons on a vessel must cooperate in the operation of observer functions. Observer programs designed or carried out in accordance with 50 CFR 222.404 would be required to be consistent with existing observer-related NOAA policies and 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), and other relevant policies.

Again, note that fisheries not included on the 2015 AD may still be observed under statutory authority other than the ESA (e.g., MMPA, MSA). Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: http://www.st.nmfs.noaa.gov/observer-home/; links to individual regional observer programs may also be found on this website.

Sea Turtle Distribution

The sea turtle distribution and ecological use of habitats that leads to the overlap of sea turtles and fisheries is critical information that NMFS uses to inform the development of the final AD. A summary of this information was included in the proposed AD (October 22, 2014, 79 FR 63066) and was considered in the development of the final 2015 AD.

Comments and Responses

NMFS received a total of seven comments on the proposed rule from members of the public, the State of North Carolina, and Turtle Island Restoration Network. Commenters expressed general support of the rule or fishery observer programs, some with additional suggestions and requests for the inclusion or exclusion of particular fisheries. All substantive comments are specifically addressed below. Comments on issues outside the scope of the AD were noted, but are not responded to in this final rule.

General Comments

Comment 1: Six commenters expressed general support of the rule.

Response: NMFS agrees, and has included 14 fisheries on the 2015 AD to allow for increased data gathering on sea turtle bycatch in order to accomplish the purposes of the rule.

Comment 2: The Turtle Island Restoration Network recommended that the Atlantic, Caribbean, and Gulf of Mexico pelagic longline and highly-migratory species fisheries be divided into independent fishery listings rather than treated as a whole, to ensure that adequate observer coverage is applied and subsequent independent ESA authority given.

Response: This recommendation is outside the scope of this rulemaking given the criteria for including fisheries on the AD as codified in the 2007 regulation (50 CFR 222.402), which specifies that NMFS will use the most recently published LOF as the comprehensive set of commercial fisheries to be considered for inclusion on the AD.

Comments on Gillnet Fisheries

Comment 3: The North Carolina Department of Environment and Natural Resources (NCDENR) expressed concern on the inclusion of the North Carolina inshore gillnet fishery and recommended that the fishery not be included on the 2015 AD. This concern was based on several factors including the low level of Federal observer effort expended on the fishery since it was included in the 2010 AD, the relatively high level of observer effort associated with the state observer program, communication difficulties that inclusion can create when both state and federal observer programs interact with fishers, existence of permits and regulations to reduce sea turtle interactions within the fishery, and NMFS observer effort is already in place under MMPA authority.

Response: After considering this recommendation, NMFS has determined the best course of action is to include the North Carolina inshore gillnet fishery on the 2015 AD. In

2013, NMFS issued an ESA section 10(a)(1)(B) incidental take permit (ITP) to NCDENR, Division of Marine Fisheries, for the incidental take of sea turtles in the North Carolina inshore gillnet fishery. As a requirement of the permit, NCDENR must maintain a specific level of observer coverage to monitor and track the level of incidental take that is occurring. Although NCDENR is currently observing this fishery under the authority of the ITP, the observer coverage required by the ITP does not include all areas where the fishery operates. NMFS has evaluated the entire North Carolina inshore gillnet fishery based on the AD criteria, and has determined that this fishery meets the criteria for inclusion on the 2015 AD. However, NMFS does not intend to place observers on vessels in a fishery subject to observer requirements under an ITP without discussion and coordination with the state.

NMFS understands there may be confusion when multiple government agencies have regulatory authority to observe, resulting in both Federal and state observers within a fishery. NMFS strives to clarify and improve the communication process regarding fishery observer requirements with local, state, and other federal entities to achieve the highest possible level of compliance and coordination.

Comment 4: The Turtle Island Restoration Network recommended that all drift gillnet fisheries be monitored, particularly the California thresher shark/swordfish drift net fishery, due to the impacts these fisheries have on sea turtles.

Response: NMFS acknowledges that there are other fisheries, in addition to those listed on the 2015 AD, that may be a concern for sea turtles. The 2015 AD is not meant to be a comprehensive list of fisheries that interact with sea turtles or fisheries that require monitoring, but rather a focused list, based on specific inclusion criteria (see Purpose of the Sea Turtle

Observer Requirement section). NMFS evaluates fisheries for inclusion on the AD on an annual basis and will re-evaluate the gillnet fisheries recommend by Turtle Island Restoration Network in future AD's. The California thresher shark/swordfish drift gillnet fishery is currently listed as a Category I fishery on the LOF, and therefore NMFS may monitor this entire fishery for marine mammals, which also allows for the collection of information on sea turtle bycatch. Dedicated observer coverage of this fishery is currently a top priority of NMFS and is considered necessary and essential to the successful implementation and monitoring of the Pacific Offshore Cetacean Take Reduction Plan and Endangered Species Act requirements already in place for the fishery. Indications are that observer coverage goals and mandates for this fishery are likely to increase in the foreseeable future due to management considerations already in place. Because NMFS does not intend to monitor this fishery beyond its existing coverage under other authorities, NMFS is not including this fishery on the 2015 AD.

Comments on Seine/Weir/Pound Net Fisheries

Comment 5: The Turtle Island Restoration Network expressed concern that the Virginia Pound Net and U.S. Mid-Atlantic mixed species stop seine/weir/pound net fisheries were not included in the 2015 AD.

Response: In accordance with the criteria for listing a fishery on the AD, NMFS is not including the Virginia Pound Net or the Mid-Atlantic mixed species stop seine/weir/pound net on the 2015 AD because NMFS does not intend to monitor these fisheries for sea turtle takes at this time. NMFS has observed the Virginia Pound Net fishery for sea turtle takes in the past, and NMFS currently maintains the authority to observe for marine mammals. Although these

fisheries are not included on the 2015 AD, the AD is published annually and these fisheries may be considered for inclusion on a future AD.

Comments on Longline Fisheries

Comment 6: The Turtle Island Restoration Network commented that, although sea turtle takes occur in association with longline fisheries, no longline fishery was included in the 2015 AD and recommended that longline fisheries (particularly the Hawaii deep-set and shallow-set longline fisheries, as well as the western Pacific pelagic deep-set fishery) be included and observed if funding becomes available for NMFS to undertake additional observing effort.

Response: NMFS agrees that sea turtle interactions occur in association with longline fisheries. However, in accordance with the criteria for listing a fishery on the AD, described above, NMFS is not including the longline fisheries noted by the Turtle Island Restoration Network on the 2015 AD because NMFS does not intend to monitor the fishery beyond the existing coverage. At this time, NMFS believes that monitoring efforts available through MMPA and MSA authorities provide sufficient monitoring coverage for assessing sea turtle interactions in longline fisheries. As noted earlier, information on sea turtles is collected whenever an interaction occurs on an observed trip. NMFS does not currently have funding available to add observer coverage specifically for the purposes of monitoring for sea turtle bycatch, and therefore these fisheries did not meet the criteria for listing on the 2015 AD. NMFS will continue to assess these and other fisheries for inclusion on future ADs.

Fisheries Included on the 2015 Annual Determination

NMFS includes 14 fisheries (12 in the Atlantic Ocean/Gulf of Mexico and 2 in the Pacific Ocean) on the 2015 AD. The 14 fisheries, described below and listed in Table 1, represent several gear types, including trawl, gillnet, trap/pot, and weir/seine.

The 2014 LOF (79 FR 14418, March 14, 2014) was used as the comprehensive list of commercial fisheries to evaluate for inclusion on the AD. All of the fisheries included on the AD are also included in the 2015 LOF (79 FR 77919, December 29, 2014). The fishery name, definition, and number of vessels/persons for fisheries listed on the AD are taken from the most recent 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.

Trawl Fisheries

Interactions with trawl fisheries are of particular concern for sea turtles, because forced submergence in 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).

Trawls that are not outfitted with turtle excluder devices (TEDs) may result in 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

The Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery (estimated 4,950 vessels/persons) targets shrimp using various types of trawls; NMFS will focus on the component of the fishery that uses skimmer trawls for the 2015 AD. 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 2,248 skimmer and butterfly net trawlers reporting landings in 2008. In 2008, Mississippi had approximately 62 active skimmer, butterfly, and chopstick boats, Alabama had 60 active skimmer boats, and North Carolina had 97 skimmer vessels (NMFS 2014). However, skimmer vessels in North Carolina have declined in recent years to 64 active vessels in 2010.

Skimmer trawl effort overlaps with sea turtle distribution and, as noted above, takes have

been observed in this fishery. In response to high numbers of sea turtle strandings since 2010, a portion of fishery observer effort was shifted from otter trawls to the nearshore skimmer trawls in the northern Gulf of Mexico during the summers of 2012, 2013, and 2014. In 2012, 119 sea days were observed in the skimmer trawl fishery resulting in 24 observed interactions with sea turtles. In 2013, 145 sea days were observed, resulting in 8 observed interactions with sea turtles. In 2014, 82 sea days were observed, resulting in 10 observed interactions with sea turtles.

Continued observer coverage to understand the scope and impact of turtle takes in this fishery is needed to inform management decisions on what additional 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% of total fishery effort. The fishery was previously included in the 2010 AD, which allowed for observer coverage to be shifted to skimmer trawls to specifically investigate bycatch of sea turtles. NMFS includes this fishery again pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including a fishery on the AD, because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in this fishery, and NMFS intends to continue to focus observer coverage in the component of the fishery that uses skimmer trawls.

Gulf of Mexico Mixed Species Trawl Fishery

The Gulf of Mexico Mixed Species Trawl Fishery (estimated 20 vessels/persons) targets

fish using various types of trawl gear, including bottom otter trawl gear targeting sheepshead. This fishery is located 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, and this fishery was not included in the 2010 AD. NMFS includes this fishery in the 2015 AD pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including 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 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 the gear is left 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., 10-12 in. [25.4-30.5 cm] stretched mesh or greater) have been documented as particularly effective at capturing sea turtles. Additionally, sea turtles have been documented entangled in smaller mesh gillnets.

Given known interactions between sea turtles and this gear type, and the need to obtain more coverage on state inshore fisheries, NMFS includes the California Halibut, White Seabass and Other Species Set Gillnet Fishery; California Yellowtail, Barracuda, and White Seabass Drift Gillnet Fishery; Chesapeake Bay Inshore Gillnet Fishery; Long Island Inshore Gillnet Fishery; North Carolina Inshore Gillnet Fishery; and Gulf of Mexico Gillnet Fishery in the 2015 AD. Each of these fisheries, with the exception of the Gulf of Mexico Gillnet Fishery, was listed on the 2010 AD.

California Halibut, White Seabass and Other Species Set Gillnet Fishery (>3.5 in mesh)

The California halibut, white seabass, and other species set gillnet fishery (estimated 50 vessels/persons) targets halibut, white seabass, and other species from the U.S.-Mexico border north to Monterey Bay using 200 fathom (1,200 ft.; 366 m) gillnets with a stretch mesh size of 8.5 in (31.6 cm). Net soak duration is typically 8-10, 19-24, or 44-49 hours at a depth ranging from 15-50 fathoms (90-300 ft.; 27-91 m), with most sets from 15-35 fathoms (90-210 ft.; 27-64 m). No more than 1500 fathoms (9,000 ft.; 2,743 m) of gill or trammel net may be fished in combination for California halibut and angel shark. Fishing occurs year-round, with effort generally increasing during summer months and declining during the last three months of the year. The central California portion of the fishery from Point Arguello to Point Reyes has been closed since September 2002, following a state ban on gillnets inshore of 60 fathoms (360 ft.; 110 m). Since 1990, set gill nets have been prohibited in state waters south of Point Arguello and within 70 fathoms (420 ft.; 128 m) or one mile (1.6 km), whichever is less, around the Channel Islands. The California Department of Fish and Game (CDFG) manages the fishery as a limited entry fishery with gear restrictions and area closures.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery in state waters for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. This fishery was included in the 2010 AD. This fishery was observed at 13% of all trips in 2010, 8% in 2011, and 6% in 2012. During that time, no sea turtle bycatch was observed in the fishery. Notwithstanding the fact that no sea turtle takes were documented in this fishery during this three year period, NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including a fishery on

the AD, because it operates in the same waters that turtles are known to occur, this gear type is known to result in the incidental take of sea turtles based on documented takes, and NMFS intends to monitor this fishery.

California Yellowtail, Barracuda, and White Seabass Drift Gillnet Fishery (mesh size >3.5 in. and <14 in.)

The California yellowtail, barracuda, and white seabass drift gillnet fishery (30 vessels/persons) targets primarily yellowtail and white seabass, and secondarily barracuda, with target species typically determined by market demand on a short-term basis. Drift gillnets are up to 6,000 ft. (1,829 m) long and are set at the surface. The mesh size depends on target species and is typically 6.0-6.5 in (15-16.5 cm). When targeting yellowtail and barracuda, the mesh size must be ≥3.5 in (9 cm); when targeting white seabass, the mesh size must be ≥6 in (15.2 cm). From June 16 to March 14 not more than 20%, by number, of a load of fish may be white seabass with a total length of 28 in (71 cm). A maximum of ten white seabass per load may be taken if taken in gillnet or trammel nets with meshes from 3.5-6.0 in (9-15 cm) in length. The fishery operates year-round, primarily south of Point Conception with some effort around San Clemente Island and San Nicolas Island. This fishery is a limited entry fishery with various gear restrictions and area closures managed by the CDFG.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery in state waters for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. This fishery was included in the 2010 AD. This fishery was observed at 5% of all trips in 2010, 3% in 2011, and 1% in 2012. During that time, no sea turtle bycatch was observed in the fishery. Notwithstanding the fact that no sea

turtle takes were documented in this fishery during this three year period, NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including a fishery on the AD because it operates in the same waters that turtles are known to occur, this gear type is known to result in the incidental take of sea turtles based on documented takes, and NMFS intends to monitor this fishery.

Chesapeake Bay Inshore Gillnet Fishery

The Chesapeake Bay inshore gillnet fishery (estimated 1,126 vessels/persons) targets menhaden and croaker using gillnet gear with mesh sizes ranging from 2.875-5 in (7.3-12.7 cm), depending on the target species. The fishery operates between the Chesapeake Bay Bridge-Tunnel and the mainland. The fishery is managed under the Interstate Fishery Management Plans (FMPs) for Atlantic menhaden and Atlantic croaker. Gillnets in Chesapeake Bay also target striped bass and spot croaker.

This fishery is classified as Category II on the MMPA LOF, and was included in the 2010 AD. There has been limited observer coverage in this fishery since 2010, with 12 observed trips in 2010, one observed trip in 2011, and three observed trips in 2013. To date, observer coverage in gillnet fisheries has focused on Federally-managed fisheries. 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 again includes 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 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

The Long Island Sound inshore gillnet fishery (estimated 20 vessels/persons) 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). Target species include bluefish, striped bass, weakfish, and summer flounder.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD. There has been limited observer coverage in this fishery since 2010. To date, observer coverage in gillnet fisheries has focused on Federally-managed fisheries. However, the NMFS Northeast Fisheries Observer Program has worked with the state of New York to develop a plan to achieve observer coverage in New York state waters between 2014 and 2017, which includes approximately 250 gillnet trips annually. 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, and the new partnership with the State of New York, NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD. NMFS also makes this determination 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.

North Carolina Inshore Gillnet Fishery

The North Carolina inshore gillnet fishery (approximately 1,323 vessels/persons) targets species including southern flounder, weakfish, bluefish, Atlantic croaker, striped mullet, spotted

seatrout, Spanish mackerel, striped bass, spot, red drum, black drum, and shad. This fishery includes any fishing effort using any type of gillnet gear, including set (float and sink), drift, and runaround gillnet for any target species inshore of the COLREGS lines in North Carolina. This fishery is managed under state and Atlantic States Marine Fisheries Commission (ASMFC) interstate FMPs, applying net and mesh size regulations, and seasonal area closures in the Pamlico Sound Gillnet Restricted Area.

NMFS issued two ESA section 10(a)(1)(B) permits for the North Carolina state-wide inshore gillnet fishery to incidentally take sea turtles in 2013, and to incidentally take Atlantic sturgeon in 2014, which include all inshore, estuarine waters, including Core Sound and Pamlico Sound. The permits require the State of North Carolina to maintain a minimum of 7% observer coverage for large mesh gillnet in each state management area for the spring, summer, and fall seasons. It also requires a minimum of 2% observer coverage for small mesh gillnets. Since issuance of the sea turtle incidental take permit in September 2013, it is estimated that 261 green sea turtles (173 alive, 88 dead) and 15 Kemp's ridley sea turtles (all alive), have been incidentally taken in the inshore large mesh gillnet fishery. Additionally, one live green sea turtle was observed in the small mesh gillnet fishery.

This fishery is classified as Category II on the MMPA LOF, and was included in the 2010 AD. NMFS has observed this fishery with limited coverage since 2010, observing 42 trips in 2010, 18 trips in 2011, 22 trips in 2012, and 28 trips in 2013. Although the state is currently required to maintain observer coverage in inshore waters, NMFS again includes 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

previously documented in this fishery, the fishery operates during a period of high sea turtle strandings, and NMFS intends to monitor this fishery.

Gulf of Mexico Gillnet Fishery

The Gulf of Mexico Gillnet Fishery (estimated 724 vessels/persons) operates in state inshore waters, targeting finfish, including Spanish mackerel, king mackerel, striped mullet, Florida pompano, and southern flounder using sink gillnets and strike gillnets.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. To better characterize fishing effort and bycatch, the NMFS Southeast Gillnet Observer Program began placing observers on state commercial gillnet vessels in coastal Louisiana, Mississippi, and Alabama in 2012. NMFS includes this fishery in the 2015 AD because sea turtles are known to occur in the same areas where the fishery operates and takes have been documented in similar other fisheries using gillnet gear, and NMFS intends to monitor this fishery.

Trap/Pot Fisheries

Sea turtles are known to become entangled in the buoy lines (also called vertical lines) of trap/pot gear, and there have been anecdotal reports that sea turtles may interact with the trap/pot itself. Turtles entangled in trap/pot gear may drown or suffer injuries (and potential subsequent mortality) due to constriction by the rope or line. Takes of both leatherback and hard-shelled sea turtles have been documented in this gear type. NMFS Greater Atlantic Regional Fisheries Office (GARFO), formerly the Northeast Regional Office, established the Northeast Atlantic Sea Turtle Disentanglement Network (STDN) in 2002 to respond to entanglements in vertical lines

associated with trap/pot gear. Reports of entangled sea turtles come from fishermen, boaters, and the general public. Since 2002, entanglements in vertical lines have averaged 20.4 annually. Takes in 2012 and 2013 increased significantly with 41 and 56 takes documented in each year, respectively. These numbers include all vertical line interactions, the vast majority of which were identified as trap/pot gear (as opposed to gillnet gear). A more systematic data collection on these interactions is needed to begin understanding the extent to which interactions occur in order to implement the prohibitions against takes, including preventing or minimizing takes.

Three pot/trap fisheries were included in the 2010 AD; Atlantic Blue Crab Trap/Pot Fishery, Atlantic Mixed Species Trap/Pot Fishery, and the Northeast/Mid-Atlantic American Lobster Trap/Pot Fishery. However, limited or no observer coverage has been achieved in these fisheries since listing on the 2010 AD. While some pot/trap vessels can be observed through traditional methods, other vessels participating in these fisheries, especially in state waters, may be too small to carry observers, which create challenges for observer programs. Further discussions regarding the most appropriate and effective methodologies for observing the pot/trap fisheries will be beneficial. On June 27, 2014, NMFS published a final rule under the MMPA that will reduce the volume of vertical lines in Atlantic waters (79 FR 36586). In addition to helping conserve and recover large whales, this reduction is expected to benefit sea turtles. NMFS will continue to monitor the implementation of this rule and evaluate its effectiveness. In addition, staff from GARFO, the Northeast Fisheries Science Center (NEFSC), and Fisheries and Oceans Canada met in December 2014 to discuss technologies that may apply to mitigating sea turtle interactions with vertical lines. Based on these discussions, the GARFO and NEFSC are developing a research plan related to vertical line and sea turtle interactions. This

plan will consider observer coverage in these fisheries. New methods to more effectively monitor these fisheries may be developed and implemented as an outcome of this meeting. Based on the input from the states, NMFS again includes all three pot/trap fisheries in the 2015 AD, further described below.

Atlantic Blue Crab Trap/Pot Fishery

The Atlantic blue crab trap/pot fishery (estimated 8,557 vessels/persons) targets blue crab using pots baited with fish or poultry typically set in rows in shallow water. The pot position is marked by either a floating or sinking buoy line attached to a surface buoy. The fishery occurs year-round from the south shore of Long Island at 72° 30' W. long. in the Atlantic and east of the fishery management demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105), including state waters. The fishery is managed under state FMPs.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD. However, since NMFS included this fishery in the 2010 AD, NMFS has been unable to observe the fishery, as discussed above. Accordingly, NMFS again includes 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 similar gear types (i.e. lobster pot fishery), and NMFS intends to monitor this fishery.

Atlantic Mixed Species Trap/Pot Fishery

The Atlantic mixed species trap/pot fishery (estimated 3,467 vessels/persons) targets species including hagfish, shrimp, conch/whelk, red crab, Jonah crab, rock crab, black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), white hake, spot, skate, catfish, and

stone crab. The fishery includes all trap/pot operations from the Maine-Canada border south through the waters east of the fishery management demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105), but does not include the following trap/pot fisheries (as defined on the MMPA LOF): Northeast/Mid-Atlantic American lobster trap/pot; Atlantic blue crab trap/pot; Florida spiny lobster trap/pot; Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot; U.S. Mid-Atlantic eel trap/pot fisheries; and the Southeastern U.S. Atlantic, Gulf of Mexico golden crab fishery (68 FR 1421, January 10, 2003). The fishery is managed under various Interstate and Federal FMPs.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD. However, since listing this fishery on the 2010 AD, NMFS has been unable to observe the fishery, as discussed above. Accordingly, NMFS again includes 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 similar gear types (i.e. lobster pot fishery), and NMFS intends to monitor this fishery.

Northeast/Mid-Atlantic American Lobster Trap/Pot Fishery

The Northeast/Mid-Atlantic American lobster trap/pot fishery (estimated 11,693 vessels/persons) targets American lobster primarily with traps, while approximately 2-3% of the target species is taken by mobile gear (trawls and dredges). The fishery operates in inshore and offshore waters from Maine to New Jersey, and may extend as far south as Cape Hatteras, North Carolina. Approximately 80% of American lobster is harvested from state waters; therefore, the ASMFC has the primary regulatory role. The fishery is managed in state waters under the ASMFC Interstate FMP and in Federal waters under the Atlantic Coastal Fisheries Cooperative

Management Act.

This fishery is classified as Category I on the MMPA LOF and was included in the 2010 AD. Since that time, NMFS observed 22 lobster trips in 2013 and 32 trips in 2014, with 216 observation days planned for the 2014-2015 schedule. NMFS STDN has documented 83 leatherback entanglements in lobster trap gear operating in Maine, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey since 2002. These entanglements have occurred between May and October (STDN, unpublished data), which is the time period when observer coverage for this fishery will be focused.

NMFS again includes 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.

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. For example, pound net leaders have a mesh component similar to a gillnet; yet sea turtles have been documented entangled in pound net leaders. Pound net leaders in the Virginia portion of the Chesapeake Bay are subject to requirements designed to reduce sea turtle bycatch. Purse seines, weirs and floating traps also have the potential to entangle and drown sea turtles, as they are set similarly to pound nets. Turtles have been documented in the pounds of pound net gear and/or weirs in Massachusetts, New York, Maryland, North Carolina, and Virginia. The turtles observed in

these pounds have generally been alive and uninjured. In Virginia, sea turtles have been documented becoming entangled with the leader, which often results in mortality.

Four pound net/weir/seine fisheries were included on the 2010 AD: the Mid-Atlantic haul/beach seine, the Mid-Atlantic menhaden purse seine, the Mid-Atlantic mixed species stop seine/weir/pound net, and the Virginia pound net fishery. Based on the information provided by states and the best available scientific information, NMFS includes again two of these fisheries: the Mid-Atlantic haul/beach seine fishery, Mid-Atlantic menhaden purse seine fishery, and adds the Rhode Island floating trap fishery on the 2015 AD.

Mid-Atlantic Haul/Beach Seine Fishery

The Mid-Atlantic haul/beach seine fishery (estimated 565 vessels/persons) targets striped bass, mullet, spot, weakfish, sea trout, bluefish, kingfish, and harvest fish using seines with one end secured (e.g., swipe nets and long seines) and seines secured at both ends or those anchored to the beach and hauled up on the beach. The beach seine system also uses a bunt and a wash net that are attached to the beach and extend into the surf. The beach seines soak for less than two hours. The fishery occurs in waters west of 72° 30' W. long. and north of a line extending due east from the North Carolina-South Carolina border. Fishing on the Outer Banks, North Carolina occurs primarily in the spring (April to June) and fall (October to December). In the Chesapeake Bay, this gear has been historically fished in the southwest portion of the Bay with some effort in the northwest portion. Effort begins to increase in early May, peaks in early/mid-June, and continues into July. During this time, based on historical data from Virginia, approximately 100 haul seine trips occur. Beach haul seines have been documented to interact with sea turtles.

The fishery is managed under the Interstate FMPs for Bluefish and for Atlantic Striped

Bass of the Atlantic Coast from Maine through North Carolina, and is subject to Bottlenose Dolphin Take Reduction Plan implementing regulations.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD. NMFS observed this fishery at low levels prior to 2008, but it has not been observed since then. NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD based on suspected interactions with sea turtles given the nature of the gear and fishing methodology in addition to effort overlapping with sea turtle distribution. In the Chesapeake Bay, the fishery operates at the same time as historically elevated sea turtle strandings, and NMFS intends to monitor this fishery.

Mid-Atlantic Menhaden Purse Seine Fishery

The Mid-Atlantic menhaden purse seine fishery (estimated 5 vessels/persons) targets menhaden and thread herring using purse seine gear. Most sets occur within 3 mi (4.8 km) of shore with the majority of the effort occurring off North Carolina from November to January, and moving northward during warmer months to southern New England. The fishery is managed under the Interstate FMP for Atlantic Menhaden. In the Chesapeake Bay, this fishery operates to a limited extent during a period of high sea turtle strandings (May and June).
This fishery is classified as Category II on the MMPA LOF and was listed on the 2010 AD. NMFS has observed this fishery at low levels, with nine trips observed in 2010, and three trips observed in 2012. NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD, given the nature of the gear and fishing methodology in addition to effort overlapping with sea turtle distribution, and NMFS intends to monitor this fishery.

Rhode Island Floating Trap Fishery

The Rhode Island Floating Trap Fishery (estimated nine vessels/persons) is a small fishery that sets traps similar to a weir/pound net seasonally (May-October) targeting scup, striped sea bass, and squid.

This fishery is classified as Category III on the MMPA LOF, and NMFS has not previously required vessels operating in this fishery to carry an observer under MMPA authority. This fishery was not included in the 2010 AD. Turtles have been documented in the pounds of pound net gear and/or weirs in Massachusetts, New York, Maryland, and Virginia, which operates similarly to the Rhode Island Floating Trap Fishery. There have also been anecdotal reports of sea turtle interactions in this fishery, but bycatch levels are unknown. NMFS includes 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 similar gear types, such as the Virginia and Maryland pound nets, and NMFS intends to monitor this fishery.

Table 1 – State and Federal Commercial Fisheries included on the 2015 Annual Determination

Fishery	Years Eligible to Carry Observers
Trawl Fisheries	
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2015-2019
Gulf of Mexico mixed species fish trawl	2015-2019
Gillnet Fisheries	
California halibut, white seabass and other species set gillnet (>3.5 in mesh)	2015-2019
California yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 in. and <14 in.)	2015-2019
Chesapeake Bay inshore gillnet	2015-2019
Long Island inshore gillnet	2015-2019
North Carolina inshore gillnet	2015-2019
Gulf of Mexico gillnet	2015-2019
Trap/pot Fisheries	
Atlantic blue crab trap/pot	2015-2019
Atlantic mixed species trap/pot	2015-2019
Northeast/Mid-Atlantic American lobster trap/pot	2015-2019
Pound Net/Weir/Seine Fisheries	
Mid-Atlantic haul/beach seine	2015-2019
Mid-Atlantic menhaden purse seine	2015-2019
Rhode Island floating trap	2015-2019

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for that certification in the proposed rule, and does not repeat it here. NMFS received no comments on this certification. Accordingly, no regulatory flexibility analysis is required, and none was 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 final 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 final rule would not make any significant change in the management of fisheries included on the AD, and therefore, this final 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 final 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 final rule would not affect the conclusions of those opinions. The inclusion of fisheries on the AD is not considered to be 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 final 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 final 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: March 12, 2015.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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