



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE191

2016 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 Annual Determination (AD) for 2016, 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) remain on the AD for a 5-year period and are required to carry observers upon NMFS' request until December 31, 2019.

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 Sea Turtle Observer Requirement for Fisheries (72 FR 43176, August 3, 2007) may be obtained at www.nmfs.noaa.gov/pr/species/turtles/regulations.htm 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 sea turtles in Florida and on the Pacific coast of Mexico, and breeding colony populations of olive ridley sea turtles 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. On March 23, 2015, NMFS and the U.S. Fish and Wildlife Service (USFWS) found that the green sea turtle is composed of 11 distinct population segments (DPSs) that qualify as “species” for listing under the ESA. NMFS and USFWS proposed to remove the current range-wide listing and, in its place, list eight DPSs as threatened and three as endangered.

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.

Where observers are required, 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 5 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.

2016 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, 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 2016 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 (50 CFR 222.402(a)(4)). The 14 fisheries identified on the 2015 AD (see Table 1) remain on the AD for a 5-year period and are therefore required to carry observers upon NMFS' request until December 31, 2019.

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

Dated: December 21, 2015.

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 Deputy Director,
 Office of Protected Resources,
 National Marine Fisheries Service.