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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 200731-0203]

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: Final determination.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes the final Annual Determination (AD) for 2020, 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 fisheries 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 2020 AD (see Table 1) will remain on the AD for a five-year period from the effective date of the final determination and will be required to carry observers upon NMFS' request.

DATES: This final determination is effective [*insert date 30 calendar days after date of publication in the FEDERAL REGISTER*].

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 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*), green (*Chelonia mydas*; Central West Pacific and Central South Pacific distinct population segments), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (Northwest Atlantic distinct population segment), green (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.

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 bycatch in these fisheries.

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). 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 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.

Sea Turtle Distribution

NMFS uses information on sea turtle distribution and habitat use to inform the development of the final AD. A summary of this information was included in the proposed AD (85 FR 3880, January 23, 2020) and was considered in developing the final 2020 AD.

Process for Developing the Annual Determination (AD)

In March, in recognition of the issuance of numerous travel or social distancing restrictions and other recommended actions related to travel and social distancing requirements in response to the COVID-19 pandemic, NMFS issued an emergency action to provide the authority to waive observer coverage, some training, and other program requirements while meeting conservation needs and providing an ongoing supply of fish to markets (85 FR 17285; March 27, 2020). Under this emergency action, NMFS regional administrators, office directors, or science center directors have the ability to waive observer requirements in three specific circumstances, after consulting with observer providers. This annual determination process, as discussed below, and the AD authority continue to apply in conjunction with the current observer programs' requirements and emergency actions. We will continue to monitor all local public health notifications, as well as notifications of the Centers for Disease Control and Prevention for updates. We are committed to the public health and safety of fishermen, observers, and others, and also to fulfilling our mission to maintain our nation's seafood supply and conserving marine life.

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 bycatch of sea turtles. NMFS provided an opportunity for public comment on the proposed determination (85 FR 3880; January 23, 2020). The determination is informed by the best available scientific, commercial, or other information regarding sea turtle bycatch; 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 identified on the AD are 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 2020 AD, the AA used 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 AD. The AD is not an exhaustive or comprehensive list of all fisheries with documented or suspected bycatch 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 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 bycatch 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 authorities different than the ESA (*e.g.*, MMPA, Magnuson-Stevens Fishery Conservation and Management Act (MSA)), if applicable.

NMFS publishes the final determination in the **Federal Register** and will notify in writing those individuals permitted for each fishery identified on the AD. 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 a subsequent 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.

Comments and Responses

NMFS received nine comment letters on the proposed AD (85 FR 3880, January 23, 2020) from members of the public and one organization, Turtle Island Restoration Network. Many commenters expressed general support of the rule or fishery observer programs, and others provided suggestions and requests for including particular fisheries. All substantive comments are addressed below. Comments on issues outside the scope of the AD were noted, but are not responded to in this final determination.

General Comments

Comment 1: Seven commenters expressed general support for the determination.

Response: NMFS agrees and has included four fisheries on the 2020 AD to allow for increased data collection on sea turtle bycatch to accomplish the purposes of the determination.

Comment 2: Turtle Island Restoration Network supports NMFS' proposal to include four fisheries on the 2020 AD. The commenter additionally requests NMFS include the two fisheries from the 2018 AD, mid-Atlantic gillnet fishery and Gulf of Mexico menhaden purse seine fishery, in a future AD when the 2018 AD timeframe expires on December 31, 2022.

Response: NMFS agrees and has included four fisheries on the 2020 AD. As the commenter noted, the mid-Atlantic gillnet fishery and Gulf of Mexico menhaden purse seine fishery were included on the 2018 AD and are required to carry observers if requested through December 31, 2022. The AD is published annually, and NMFS will continue to assess these and other fisheries for inclusion on future ADs.

Comment 3: A commenter recommended NMFS take advantage of the opportunity to observe fisheries identified on the AD and find creative ways to prevent sea turtle bycatch. The commenter urges the publication and application of sea turtle bycatch data collected through the

AD determination.

Response: The four fisheries included on the 2020 AD will remain on the AD for a five-year period and will be required to carry observers upon NMFS' request. This will enable NMFS to develop appropriate observer coverage and sampling protocols to investigate whether, how, when, where, and under what conditions bycatch is occurring; to evaluate whether existing measures are minimizing or preventing bycatch; and to implement ESA take prohibitions and conserve turtles. Observer data collected under the ESA AD authority are generally used to estimate and/or characterize bycatch in a particular fishery. These data and resulting analyses are made available in NMFS publications, as appropriate, given data confidentiality considerations.

Gillnet Fisheries

Comment 4: One commenter noted that the proposed rule does not provide a specific plan with evaluation criteria for how NMFS will monitor the Chesapeake Bay inshore gillnet fishery for sea turtle bycatch.

Response: The purpose of the AD is to identify commercial and recreational fisheries that are required to carry observers upon NMFS' request under the authority of the ESA. As stated in the preamble, sampling designs for all NMFS observer programs are developed to provide statistically valid information and to produce results that will contribute to the body of best available science. The sampling design will vary depending on many factors, including the fishery to be observed, the spatial and temporal variability in the fishery and species observed, and the overall goals of the observer program. Once a fishery is selected for observer coverage, a sampling design will be developed to yield statistically valid results (72 FR 43176; August 3, 2007). Sampling designs for all regional observer programs are published in many different forums, including peer reviewed journals and NMFS stock assessment reports. For new observer programs, a pilot study is often initiated to provide information on variability of bycatch species

within a fishery. The information collected during this pilot study is then used to more accurately determine the target observer coverage necessary to provide accurate bycatch estimates (typically measured as a coefficient of variation around the bycatch estimate).

Recommendations for Fisheries to Include on the 2020 AD

Comment 5: Turtle Island Restoration Network requests NMFS include all fisheries from the 2015 AD in its 2020 AD. These fisheries are: California halibut, white seabass and other species set gillnet (>3.5 in mesh), California yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 in. and <14 in.), Gulf of Mexico gillnet, North Carolina inshore gillnet, Atlantic blue crab trap/pot, Atlantic mixed species trap/pot, Northeast/mid-Atlantic American lobster trap/pot, mid-Atlantic haul/beach seine, mid-Atlantic menhaden purse seine, and Rhode Island floating trap. The commenter notes that these fisheries meet the criteria to be included on the AD because they operate in the same waters and at the same time as sea turtles are present, operate at the same time or prior to elevated sea turtle strandings, or 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.

Response: NMFS acknowledges that there are other fisheries, in addition to those included on the 2020 AD, that are known to take sea turtles. The 2020 AD is not meant to be a comprehensive list of fisheries that have sea turtle bycatch or fisheries that require monitoring, but rather a focused list, based on specific inclusion criteria, one of which is based on available funding (see Purpose of the Sea Turtle Observer Requirement section). NMFS is not including these 10 fisheries recommended by Turtle Island Restoration Network on the 2020 AD but will continue existing observer coverage for these fisheries under other authorities. NMFS will continue to assess these and other fisheries for inclusion on future ADs.

Observer Coverage

Comment 6: Turtle Island Restoration Network requests NMFS provide 100 percent observer coverage on all AD fisheries, to ensure accurate bycatch reporting. The commenter notes that in 2015 the Pacific Fishery Management Council recommended increasing observer coverage to 100 percent for all drift gillnet fisheries, and states that issuing “hard caps” without 100 percent observer coverage will not meet the goal of issuing such hard caps. Turtle Island Restoration Network states that NMFS must strive for 100 percent observer coverage in every observed fishery in order to accurately assess bycatch of protected species.

Response: The AD does not prescribe a specific level of observer coverage for any fishery; rather it identifies fisheries for which NMFS intends to collect additional information. As described above, the sampling design of any observer program for fisheries identified through the AD process is determined on a fishery-by-fishery basis.

Fisheries Included on the 2020 Annual Determination

NMFS includes 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. 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

Bycatch in trawl fisheries are of particular concern for sea turtles because forced submergence 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. TEDs are 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 includes the Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery on the 2020 AD. This fishery has an estimated 4,950 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 turtle excluder device (TED) requirements for shrimp bottom otter trawls. On December 20, 2019, NMFS published a final rule (84 FR 70048) amending the alternative tow time restriction to require all skimmer trawl vessels 40 feet and greater in length to use TEDs designed to exclude small sea turtles in their nets. The rule is effective on April 1, 2021. Skimmer trawls are used in North Carolina, Florida (Gulf Coast), Alabama, Mississippi, and Louisiana. There is documented bycatch 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 bycatch in skimmer trawls has been documented. 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 efforts 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 hours were observed during that period. Despite this extremely low level of observer effort, a total of 41 sea turtles were observed captured; we excluded two 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 bycatch 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 bycatch, 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 includes 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, takes have been previously documented and NMFS intends to monitor in this fishery.

Gulf of Mexico Mixed Species Fish Trawl Fishery

NMFS includes 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. This fishery was included in the 2015 AD but was not observed due to lack of resources. NMFS includes 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, bycatch has 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 includes 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 (6.9 -12.7 cm), depending on the target species. The fishery operates inshore of the Chesapeake Bay Bridge-Tunnel 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 bycatch in 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 bycatch and the limited data currently available on interactions, NMFS includes 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 includes 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 bycatch in this fishery and the nature of the gear fished in state waters. Given the risk of bycatch and the limited data currently available on such interactions, NMFS includes 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, bycatch has 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 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. After publication of the final determination, there will be 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 determination effective upon publication of the final determination. For the 2020 AD, the AA has not made this determination; therefore, this determination is effective 30 days after publication of this notification, see **DATES**.

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 included on the 2020 Annual Determination.

Fishery	Years Eligible to Carry Observers
<u>Trawl Fisheries</u>	
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2020-2025
Gulf of Mexico mixed species fish trawl	2020-2025
<u>Gillnet Fisheries</u>	
Chesapeake Bay inshore gillnet	2020-2025
Long Island inshore gillnet	2020-2025

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. No comments were received on that certification, and no new information has been discovered to change that conclusion. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

This determination contains existing collection-of-information (COI) requirements subject to the Paperwork Reduction Act and would not impose additional or new COI requirements. 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 determination has been determined to be not significant for the purposes of Executive Order 12866. This determination is not an Executive Order 13771 regulatory action because this determination is not significant under Executive Order 12866.

In accordance with the Companion Manual for NOAA Administrative Order (NAO) 216-6A, NMFS determined that publishing the AD qualifies to be categorically excluded from further National Environmental Policy Act (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 determination 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 determination 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 determination 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 determination 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: August 3, 2020.

Donna S. Wieting,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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