

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does

it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental Relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: April 30, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" under Chapter 101 is amended by:

■ a. Revising the entries for Sections 101.302 and 101.306 under Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading.

■ b. Adding an entry for Section 101.305 under Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading, in numerical order.

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Chapter 101—General Air Quality Rules				
*	*	*	*	*
Subchapter H—Emissions Banking and Trading Division 1—Emission Credit Banking and Trading				
*	*	*	*	*
Section 101.302	General Provisions	7/25/2007	5/18/10 [Insert FR page number where document begins].	
*	*	*	*	*
Section 101.305	Emission Reductions Achieved Outside the United States.	10/4/2006	5/18/10 [Insert FR page number where document begins].	
Section 101.306	Emission Credit Use	7/25/2007	5/18/10 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 2010-11683 Filed 5-17-10; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 0906181067-0167-02]

RIN 0648-XP96

2010 Annual Determination for Sea Turtle Observer Requirements

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 2010, pursuant to its authority under the Endangered Species Act (ESA). Through this AD, NMFS identifies commercial fisheries operating in state and Federal waters 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 existing measures to reduce or prevent prohibited sea turtle

takes, and to determine whether additional measures to implement the prohibition against sea turtle takes may be necessary. Fisheries identified through this process will remain on the AD, and therefore required to carry observers upon NMFS' request, for 5 years.

DATES: Effective June 17, 2010.

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

FOR FURTHER INFORMATION CONTACT:

Kristy Long, Office of Protected Resources, 301-713-2322; Ellen Keane, Northeast Region, 978-282-8476; Dennis Klemm, Southeast Region, 727-824-5312; Elizabeth Petras, Southwest

Region, 562-980-3238; Kim Maison, Pacific Islands Region, 808-944-2257. 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, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930-2298;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701;

NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; or

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI 96814-4700.

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*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*), 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 one of the main sources of sea turtle injury and mortality nationwide.

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). Sections 9 and 11 of the ESA authorize the issuance of regulations to enforce the take prohibitions. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine that the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. In some cases, NMFS has been able to make this determination because the fishery is conducted with modified gear or modified fishing practices that NMFS has been able to evaluate. However, for some Federal fisheries and most state fisheries, NMFS has not granted an exception primarily because we lack information about fishery-turtle interactions. Therefore, any incidental take of sea turtles in those fisheries is unlawful as it has not been exempted from the ESA prohibition on take.

The most effective way for NMFS to learn more about sea turtle-fishery interactions in order to prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) to establish procedures through which each year NMFS will 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, either recreational or commercial, 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 U.S. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

NMFS and/or interested cooperating entities 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 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; to evaluate whether existing measures are minimizing or preventing takes; and to determine whether additional measures are needed to implement ESA take prohibitions and conserve turtles.

Process for Developing an Annual Determination

Pursuant to 50 CFR 222.402, the Assistant Administrator for Fisheries, NOAA (AA), in consultation with Regional Administrators and Fisheries Science Center Directors, develops a proposed annual determination identifying which fisheries are required to carry observers, if requested, to monitor potential interactions with sea turtles. NMFS provides an opportunity for public comment on any proposed determination. The determination is 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; or qualitative data from logbooks or fisher reports. Specifically, this determination 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.

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. The classification scheme used for fisheries on the LOF would not be relevant to this process. Unlike the LOF process, an annual determination may also 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 and other entities to identify which fisheries, both commercial and recreational, should be considered in the annual determination. 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 2010 AD than is feasible at this time 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; there are additional fisheries that NMFS remains concerned about. For these additional fisheries, NMFS may already be addressing incidental take through another mechanism (e.g., rulemaking to implement modifications to fishing gear and/or practices) or will consider adding them to future annual determinations based on the four previously noted criteria (50 CFR 222.402(a)).

Notice of a final determination, such as the 2010 AD, will be published in the **Federal Register** and made in writing to individuals permitted for each fishery identified for monitoring. NMFS will also notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and other means, as appropriate. Once included in a final determination, a fishery will remain eligible for observer coverage for 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. As part of the 2010 AD, NMFS included, to the extent practicable, information on the fisheries or gear types to be sampled, geographic and seasonal scope of coverage, and any other relevant information. After publication of a final AD, a 30-day delay in 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.

Implementing Observer Coverage in a Fishery Listed on the 2010 Annual Determination

The design of any observer program for fisheries identified through the AD process, including how observers will be allocated to individual vessels, would vary among fisheries, fishing sectors, gear types, and geographic regions and would ultimately be determined by the individual NMFS Regional Office, Science Center, and/or observer program. During the program

design, NMFS will be guided by the following standards for distributing and placing observers among fisheries identified in the AD and vessels in those particular fisheries:

- (1) The requirements 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 this rule 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 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. In any case, 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 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 600), and other relevant policies.

Fisheries not included on the 2010 AD may still be observed under a different authority 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.gov/st4/nop/>; links to individual regional observer programs may also be found on this website.

Comments and Responses

NMFS received comments from 3 individual members of the public, Environmental Defense Fund, Oceana, Garden State Seafood Association, Cape

Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, Mid-Atlantic Fishery Management Council, and the States of Connecticut, Maryland, and New Jersey on the proposed 2010 AD (74 FR 59508, November 18, 2009). Comments on issues outside the scope of the AD were noted, but are not responded to in this final rule.

General Comments

Comment 1: Several commenters support including 19 fisheries on the 2010 AD.

Response: NMFS agrees and includes 19 fisheries on the 2010 AD.

Comment 2: The State of New Jersey inquired whether the fisheries to be observed listed in Table 1 are in priority order.

Response: Table 1 is somewhat prioritized by gear type (trawl, gillnet, trap/pot, and pound net/weir/seine); specific fisheries within those gear types are alphabetized. The order of those gear types represents NMFS' current priorities under the NMFS' Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries ("Strategy"). Fisheries operating in the Pacific Ocean will be considered similarly. However, NMFS' Regional Observer Programs are implemented somewhat independently based on several factors including available funding, staff resources, the number of certified observers in a given region, etc. Therefore, NMFS will consider all of these factors when deciding which fisheries to observe in a given year. For example, increasing coverage within existing observer programs may be more feasible than beginning a new program in a given year based on available funding and staff resources in a particular region.

Comment 3: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association inquired how and when fisheries are removed from the AD. The commenters suggest that there be a process outlined in this final rule for removing fisheries before the 5 years expire.

Response: The amount of time that fisheries remain on the AD was the subject of the previous rulemaking that implemented the observer requirement (72 FR 43176, August 3, 2007); this rulemaking does not amend those regulations or implement new regulations. The regulations at 50 CFR 222.403(a) specify that once selected, a fishery remains eligible for observer coverage for five years.

Comment 4: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association suggest adding a criterion for including fisheries on the AD that considers past observer coverage.

Response: The criteria that NMFS considers when proposing to include a fishery on the AD were the subject of the previous rulemaking that implemented the observer requirement (72 FR 43176, August 3, 2007); this rulemaking does not amend those regulations or implement new regulations.

Comment 5: The State of Connecticut notes that the report from the 2008 Observer Workshop includes a statement about using state observers under NMFS' authority to implement this observer requirement and they would like to have state observers certified for this purpose.

Response: Since the workshop in 2008, NMFS has determined that the regulations in 50 CFR 222.402 provide authorization only for Federal observer programs implemented by NMFS. The State may be able to act as the Observer Service Provider and enter into an agreement with NMFS contingent upon certification of those observers by NMFS (i.e., those state observers are NMFS-certified).

Comment 6: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association suggests that broad gear categories do not pose similar risks to sea turtles and recommends that fisheries be examined on a case-by-case basis for temporal/spatial overlap with turtle distribution, while accounting for regional fishing practices and past/current observer coverage.

Response: The universe of commercial fisheries considered for the Annual Determination is based on the MMPA LOF. If the LOF defines a fishery based on broad gear type, NMFS must also use that same fishery on the Annual Determination. If the commenters have suggestions for re-defining fisheries on the MMPA LOF, they should consider commenting during the 2011 LOF process. See *Comments on Observer Programs* below for additional information on how past observer coverage is factored into sampling designs.

Comment 7: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association inquired how this observer requirement would yield statistically rigorous information when statistically

valid information or accurate data on the status and trends of sea turtles has not been provided.

Response: This comment appears to be directed at the rule promulgated by NMFS on August 3, 2007, codified at 50 CFR Part 222 Subpart D, and is thus outside the scope of this rulemaking. However, NMFS responds to clarify that, as stated in the preamble to that rulemaking: "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]

Regardless of the data available on the status and trends of sea turtles, this program will collect statistically valid information on sea turtle takes. NMFS continues to work to better understand the status and trends of sea turtle populations, including through survey efforts, population modeling, and status reviews.

Comment 8: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association further inquired how bycatch rates and estimates would be applied during ESA section 7 and 10 consultations as well as broad-based gear regulations.

Response: This comment is beyond the scope of this rulemaking. The preamble to the rule codified at 50 CFR Part 222 Subpart D describes how the information gathered will be used (72 FR 43176, August 3, 2007). Because data have not yet been collected nor analyzed, NMFS can not now identify what, if any, management actions it might take in response to those data.

Comments on Observer Programs

Comment 9: Environmental Defense Fund recommends using new technologies, including video monitoring to eliminate observer bias, increase level of monitoring (as it becomes more cost effective) and monitor unobservable vessels.

Response: New technologies for monitoring fisheries (commonly referred to as "electronic monitoring" or EM) offer many benefits of interest to NMFS. However, their efficacy in meeting monitoring objectives varies by fishery and monitoring goal. EM studies,

including video monitoring, are ongoing in many NMFS regions, and the results are promising. The ability of these technologies to meet monitoring objectives has primarily been evaluated in experimental situations; many questions still remain as to their efficacy and true cost. NMFS generally supports the use of EM to augment at-sea observer coverage, and fully supports the use of EM, as well as other alternative monitoring methods, to cover unobservable vessels. NMFS will continue to work through its cooperative research and fisheries observer programs to evaluate how EM technology may be used to supplement observer programs, including those implemented under the AD.

Comment 10: The State of New Jersey requested training in observer protocols for state personnel to augment NMFS coverage in state waters under State authority and increase effectiveness.

Response: The Northeast Fisheries Observer Program (NEFOP) has helped individual states develop their own state fisheries observer programs, and will continue to do so as long as the demand doesn't compromise the training needs of NEFOP. The support NEFOP provides includes training, logs, manuals, protocols and entry screens.

Comment 11: The State of New Jersey inquired how observer coverage will be allocated across fisheries and requested that the State be consulted each year during the vessel selection process.

Response: Observer coverage is allocated in proportion to fishing effort by time/area. All active vessels, identified for observer coverage within a particular time/area, may be randomly selected. Current NEFOP protocols prohibit repeat trips on the same vessel, during a 30 day period, if other vessels are active and have not been selected. NEFOP attempts to ensure that observer coverage is fair and equitable, without overburdening a particular fisherman or fishery. NEFOP posts the sea day schedule on the following website: <http://www.nefsc.noaa.gov/femad/fsb>. This website provides the chance for all interested parties to review the planned coverage. NEFOP would welcome the opportunity to work with individual states when developing a list of vessels to be selected for that proposed coverage.

Comment 12: Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association inquired how NMFS will implement the requirements in a way that no fisherman or group of fishermen will be expected to carry excessive observer coverage. Further, Garden State

Seafood Association believes that NJ fishermen have been overburdened with an excessive share of observer training trips/coverage (e.g., 72 trips in 2005).

Response: As previously described, NEFOP makes every legitimate attempt to not overburden a particular fisherman or fishery. Days are allocated in proportion to fishing effort by time/area. From 2000 to 2005, the NEFOP grew from 1,200 sea days per year to 12,000 sea days per year; increasing from 12 to 120 observers. That increase necessitated additional training trips. Training trips require that an experienced observer shadow a new observer until they are fully certified in all sampling protocols. Gillnet sampling protocols, per NEFSC scientists conducting harbor porpoise bycatch analysis, require observers to observe the net for harbor porpoise “fall outs” during retrieval, instead of sampling discarded fish. These trips are referred to as “limited” gillnet trips because of the limited sampling of fish. All of the gillnet days on the NEFOP sea day schedule for protected species are “limited” days. This includes both New England and mid-Atlantic areas. In addition to these “limited” gillnet days, scientists conducting fish stock assessments also populated the sea day schedule with gillnet days, but unlike the “limited” days, complete sampling of all discards was required. The majority of these “complete” days were assigned to areas in New Jersey and north. Prior to December 2005, in order to provide the best training trips possible, new observers from southern ports were often sent to New Jersey, or ports farther north, for those important training trips. This resulted in proportionally more training trips occurring in New Jersey. Once this problem was brought to the attention of NEFOP, protocols were changed so that new observers, during their training trips, could use “complete” sampling protocols regardless of the port used for training. This change was made in December 2005, and since then NEFOP has not received any reports that this issue continues to be a problem.

Comment 13: Cape Seafoods, Inc., Lund’s Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association expressed concern about the competing needs (e.g., population dynamics, food habits, protected species, fisheries management, etc.) for a given observer program and how NMFS intends to balance those needs with observer program design/implementation. The commenters also note that the proposed 2010 AD indicates that the program design could

be the responsibility of a regional office, science center, or observer program. The commenters suggest that clear lines of responsibility should be placed on program design/implementation.

Response: Within each of the six NMFS Regional Observer Programs, the responsibility for observer program design and implementation is clearly defined. Manual and protocol revisions occur regularly based on the changing needs of end users (e.g., NMFS managers). For example, NEFOP works closely with all end users to ensure that the data collected by observers is relevant and meets their needs. Those needs, for example, could include compliance monitoring, data collection for regulatory development, or data collection for stock assessments. To date, NEFOP has been able to successfully balance the needs of all end users.

Comment 14: Cape Seafoods, Inc., Lund’s Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association suggested that NMFS consider social and economic burdens of sea turtle observer coverage with respect to total observer coverage.

Response: See Response to *Comment 11* and the Classification section below.

Comment 15: One commenter inquired whether minimum standards for selecting a vessel, in each of the fisheries, to carry an observer have been identified. The commenter notes potential for introducing bias and suggests NMFS Observer Programs develop methods for reducing the number of unobservable vessels.

Response: With the exception of certain safety requirements (e.g., possessing a current U.S. Coast Guard commercial fishing vessel safety decal), minimum national standards for vessel selection do not exist. Regional observer programs perform routine analyses to diagnose and correct for bias in vessel selection. A 2006 NMFS workshop (report available from: <http://www.st.nmfs.noaa.gov/st4/nop/workshops.html>) reviewed vessel selection procedures and documented analytical methods and tools that could be used to assess the occurrence and magnitude of bias. Workshop participants identified alternative selection methods that could reduce or eliminate sources of bias, such as using alternative platforms or electronic monitoring to address unobservable vessels.

Comments on Trawl Fisheries

Comment 16: The Mid-Atlantic Fishery Management Council suggested removing *Illex* from the list of species

targeted with flynets because while they are included in the mid-Atlantic bottom trawl general category, the *Illex* fishery is not prosecuted using flynets.

Response: The flynet fishery description in the proposed 2010 AD is based on the fishery as defined under the Marine Mammal Protection Act (LOF). NMFS will consider revising the characterization of the flynet fishery in a future LOF.

Comment 17: Cape Seafoods Inc., Lund’s Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association recommend removing the mid-Atlantic mid-water trawl (including pair trawl) for mackerel from the 2010 AD as optimum mackerel trawl fishing occurs in areas where the sea surface temperature is less than 7 degrees Celsius. The commenters note that this temperature regime is not in the range one would expect sea turtles to normally thrive.

Response: Sea turtles are poikilotherms whose internal body temperature is affected by the ambient environment. They undertake routine migrations along the coast limited by seasonal water temperatures. Loggerheads have been observed in waters with surface temperatures of 7° to 30° C, but water temperatures $\geq 11^\circ$ C are most favorable (Shoop and Kenney 1992; Epperly *et al.*, 1995). During the CETAP aerial survey of the outer continental shelf from Cape Hatteras, North Carolina, to Cape Sable, Nova Scotia, leatherbacks were sighted in waters within a sea surface temperature range similar to that observed for loggerheads; from 7°–27.2° C. However, leatherbacks appear to have a greater tolerance for colder waters in comparison to loggerhead sea turtles since more leatherbacks were found at lower temperatures (Shoop and Kenney 1992).

As defined on the LOF, the mid-water trawl fishery for Atlantic mackerel is one component of the overall mid-Atlantic mid-water trawl (including pair trawl) fishery. This fishery targets Atlantic mackerel, chub mackerel, and other miscellaneous pelagic species (e.g., Atlantic herring). The component of the fishery targeting mackerel uses the same gear type and fishing practices as the rest of the fishery targeting other species. Therefore, NMFS is including this fishery on the 2010 AD to more adequately observe this gear type in areas and during times where it overlaps with sea turtle distribution.

Comments on Gillnet Fisheries

Comment 18: The State of Connecticut provided information on

the Long Island Sound commercial gillnet fishery operating in CT waters. The State noted that there have been less than 19 active fixed gillnetters operating during the months of May through October, no interactions with sea turtles have been documented, and there were a limited number of sea turtle strandings in CT waters ($n=12$) from 1998 to 2004. The commenter states that it is unlikely that there are enough turtles present in CT waters and likely to be at risk to justify observer coverage in this fishery. The commenter also suggests that monitoring this fishery would not contribute to meaningful information on sea turtle bycatch.

Response: The portion of the Long Island Sound inshore gillnet fishery operating in CT waters is one component of the Long Island Sound inshore gillnet fishery as defined on the LOF. The fishery includes all gillnet fisheries setting nets west of a line from the north fork of the eastern end of Long Island, NY (Orient Point to Plum Island to Fisheries Island) to Watch Hill, RI (59 FR 43703, August 25, 1994). Northeast waters are an important developmental habitat for hard-shelled sea turtles and sea turtles occur in Long Island Sound. As described in the proposed rule, sea turtles are vulnerable to entanglement and drowning in gillnets. Past observer coverage in this fishery is limited to a small number of federally observed trips. Therefore, NMFS is including this fishery on the 2010 AD to better understand this fishery and how it may impact sea turtles. NMFS will consider information on sea turtle distribution and the spatial and temporal extent of gillnet fisheries operating in Long Island Sound in designing an appropriate sampling program for this fishery.

Comment 19: Garden State Seafood Association recommends excluding NJ-based vessels that target bluefish and croaker in the Mid-Atlantic gillnet fishery because there were 179 trips observed between 2000 and 2005 and no sea turtle takes were documented.

Response: Fisheries observers in the mid-Atlantic have documented take of loggerhead, green, Kemp's ridley, and leatherback turtles in sink gillnet gear from Cape Cod to North Carolina. Observed interactions have occurred on trips targeting a variety of species, including bluefish and Atlantic croaker. From 1995–2006, the average annual bycatch estimate of loggerheads captured in mid-Atlantic sink gillnet gear was 350 turtles (Murray 2009). Bycatch rates were correlated with latitude, sea surface temperature, and mesh size. Highest predicted bycatch rates occurred in warm waters of the

southern mid-Atlantic, in large-mesh (≤ 17.8 cm) gillnet gear (Murray 2009).

Gillnet fisheries, including those targeting bluefish and croaker, that overlap with sea turtle distribution have the potential to take sea turtles.

Typically, observer coverage is allocated in proportion to fishing effort, by month and port, with vessels selected randomly for coverage. Vessels are selected based on gear type, not target species. If the majority of the gillnet vessels fishing out of a particular port targeted bluefish, the data should reflect that.

To better understand the interactions of these fisheries with sea turtles, NMFS is including the mid-Atlantic gillnet fishery on the 2010 AD to focus observer coverage during times and areas where sea turtles are known to occur. Information on sea turtle distribution and the spatial and temporal extent of these fisheries will be considered in designing an appropriate sampling program for the fishery.

Comment 20: Oceana recommended including all Gulf of Mexico and Caribbean gillnet fisheries on the 2010 AD because of similarities to other gillnet fisheries as well as the large number of participants.

Response: NMFS recognizes that gillnet fisheries in areas other than those identified in the first AD may pose similar issues for sea turtles. However, the regulations implementing this observer requirement at 50 CFR 222.402 specifically state that the annual determination will be 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. Although many fisheries meet one or more of the first three requirements, NMFS must also consider the fourth criterion, which is dependent upon available agency resources. Given the agency's current resources for implementing this program, NMFS is not including any gillnet fisheries in the Gulf of Mexico or Caribbean on the 2010 AD. However, this is an annual process and NMFS will consider including additional fisheries on future ADs based upon the aforementioned criteria.

Comments on Trap/Pot Fisheries

Comment 21: The State of Connecticut provided information on

the commercial lobster pot fishery in Connecticut and a description of the state monitoring program. Specifically, since 1982, the CT Department of Environmental Protection's Marine Fisheries Division has observed 13,693 multi-trap trawl hauls on 643 commercial lobster trips in Long Island Sound. During the program, a single take of a sea turtle was documented in August 2009; a leatherback turtle was observed entangled in a vertical line.

Response: NMFS appreciates receiving detailed information on the monitoring program and CT commercial lobster pot fishery. This fishery is one component of the overall Northeast/Mid-Atlantic American Lobster Trap/Pot fishery, which operates from Maine to New Jersey and may extend as far south as Cape Hatteras, NC. As noted by the commenter and described in the proposed rule (74 FR 59508, November 18, 2009), sea turtles are known to become entangled in the end lines (also called vertical lines) of trap/pot gear. There have also been anecdotal reports that sea turtles may interact with the trap/pot itself. NMFS currently has only limited data on sea turtle bycatch in this fishery. NMFS is including this fishery, focusing on waters south of Massachusetts where sea turtles more commonly occur, on the 2010 AD to obtain information on sea turtle bycatch and how turtles may interact with the gear. The information provided will be considered in designing an appropriate sampling program for this fishery.

Comments on Longline Fisheries

Comment 22: Oceana recommends including all longline fisheries, both pelagic and bottom longlines, on the 2010 AD. Specifically, the commenter noted the need for additional observer coverage in the Gulf of Mexico reef fish bottom longline fishery as well as new observer programs for the Northeast/mid-Atlantic bottom longline, Caribbean snapper grouper and other bottom longline fisheries.

Response: 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. Another purpose of the AD is to learn more about sea turtle-fishery interactions in the identified fisheries in order to have information necessary to provide exemptions to the take prohibitions, consistent with ESA sections 4(d), 7 and 10, if warranted for certain fisheries.

NMFS did not include any pelagic longline fisheries on the 2010 AD because all commercial pelagic longline

fisheries as included on the MMPA LOF are currently observed for sea turtles and incidental takes authorized. Similarly, the Gulf of Mexico reef fish bottom longline fishery is currently observed for sea turtles and takes authorized. Therefore, including these fisheries on the 2010 AD would be duplicative at this time.

NMFS evaluated the aforementioned criteria in 50 CFR 222.402 and determined that the agency could not satisfy the fourth criterion at this time with regard to including the other bottom longline fisheries recommended by the commenter. However, this is an annual process and NMFS will consider including additional fisheries, including longline fisheries, on future ADs.

Comments on Recreational Fisheries

Comment 23: Cape Seafoods Inc., Lund's Fisheries, Inc., Northern Pelagic Group LLC, Western Sea Fishing Company, and Garden State Seafood Association suggests noting that recreational fisheries are responsible for sea turtle deaths and recommends that NMFS specify a clear process for including recreational fisheries on the AD. Specifically, they recommend using the new recreational fishing registry implemented in January 2009 to identify fisheries.

Response: NMFS recognizes that recreational fisheries may also incidentally take sea turtles and, therefore, included recreational fisheries under the observer requirement at 50 CFR 222.401.

NMFS appreciates the commenter's suggestion to use the recreational fishing registry and will consider including recreational fisheries on future ADs.

Comment 24: Oceana recommended including recreational fisheries on the 2010 AD.

Response: NMFS considered recreational fisheries in developing the proposed 2010 AD, but the agency did not feel we had enough information to develop an observer program. Further, NMFS determined that the agency could not satisfy the criterion at 50 CFR 222.402(a)(4) required to include a fishery on the AD. As noted in the response to Comment 23, NMFS will use the information from the recreational fishing registry, along with other information from the Marine Recreational Information Program, to obtain the necessary information to consider including specific recreational fisheries on a future AD.

Addition of Fisheries on the 2010 Annual Determination

NMFS is including 19 fisheries (17 in the Atlantic Ocean and Gulf of Mexico and 2 in the Pacific Ocean) on the 2010 AD. These 19 fisheries, described below and listed in Table 1, represent several gear types, including trawl, gillnet, trap/pot, and pound net/weir/seine. For a complete description of the information and state recommendations NMFS used in developing the 2010 AD, please see the proposed rule (74 FR 59508, November 18, 2009).

Trawl Fisheries

Based on the information provided by states and the best available scientific information, NMFS includes the following trawl fisheries on the 2010 AD.

Atlantic Shellfish Bottom Trawl Fishery

The Atlantic shellfish bottom trawl fishery (estimated 972 vessels/persons) encompasses the calico scallop trawl, crab trawl, Georgia/South Carolina/Maryland whelk trawl, Gulf of Maine/Mid-Atlantic sea scallop trawl, and Gulf of Maine northern shrimp trawl (71 FR 2006, January 4, 2006). This fishery extends from Maine through Florida. NMFS is particularly interested in observing this fishery in waters off of Massachusetts and south as sea turtles more commonly occur in this area. NMFS includes this fishery on the 2010 AD based on documented interactions with sea turtles in this and other bottom trawl fisheries and the need to obtain more information on the interactions in this fishery.

Mid-Atlantic Bottom Trawl Fishery

Bottom otter trawl nets include a variety of net types, including flynets, which are high profile trawls. The "Mid-Atlantic bottom trawl fishery" as described in this proposed AD includes both the mid-Atlantic bottom trawl fishery and the mid-Atlantic flynet fishery as defined on the LOF.

The Mid-Atlantic bottom trawl fishery (estimated <1,000 vessels/persons), as defined on the LOF, uses bottom trawl gear to target species including, but not limited to, bluefish, croaker, monkfish, summer flounder (fluke), winter flounder, silver hake (whiting), spiny dogfish, smooth dogfish, scup, and black sea bass. The fishery occurs year-round from Cape Cod, MA, to Cape Hatteras, NC, in waters west of 72° 30' W. long. and north of a line extending due east from the North Carolina/South Carolina border.

The Mid-Atlantic flynet fishery (estimated 21 vessels/persons), as defined on the LOF, is a multi-species

fishery composed of nearshore and offshore components that operate along the east coast of the mid-Atlantic United States. The nearshore fishery operates from October to April inside of 30 fathoms (180 ft; 55 m) from New Jersey to North Carolina. This nearshore fishery targets Atlantic croaker, weakfish, butterfish, harvestfish, bluefish, menhaden, striped bass, kingfish species, and other finfish species. The offshore component operates from November to April outside of 30 fathoms (180 ft; 55 m) from the Hudson Canyon off New York, south to Hatteras Canyon off North Carolina. These deeper water fisheries target bluefish, Atlantic mackerel, *Loligo* squid, black sea bass, and scup (72 FR 7382, February 15, 2007).

NMFS includes this fishery on the 2010 AD to more adequately observe this gear type where and when it overlaps with sea turtle distribution.

Mid-Atlantic Mid-water Trawl (including pair trawl) Fishery

The Mid-Atlantic mid-water trawl fishery (estimated 620 vessels/persons) primarily targets Atlantic mackerel, chub mackerel, and miscellaneous other pelagic species. NMFS includes this fishery on the 2010 AD to more adequately observe this gear type in areas and during times where it overlaps with sea turtle distribution.

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

The Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery (estimated >18,000 vessels/persons) targets shrimp using various types of trawls; NMFS would focus on the component of the fishery that uses skimmer trawls for the 2010 AD. Skimmer trawls are used primarily in inshore/inland shallow waters (typically less than 20 ft (6.1 m)) to target shrimp. NMFS is including the Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery, to focus observer coverage in the component of the fishery that uses skimmer trawls, on the 2010 AD.

Gillnet Fisheries

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

The CA halibut, white seabass, and other species set gillnet fishery (estimated 58 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) gillnet with a stretch mesh size of 8.5 in (31.6 cm). NMFS includes this fishery on the 2010 AD because it

operates in the same waters that turtles are known to occur and this gear type is known to result in the incidental take of sea turtles based on documented takes in similar fisheries.

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

The CA yellowtail, barracuda, and white seabass drift gillnet fishery (24 vessels/persons) targets primarily yellowtail and white seabass, and secondarily barracuda, with target species typically determined by market demand on a short-term basis. NMFS includes this fishery on the 2010 AD because it operates in the same waters that turtles are known to occur and this gear type is known to result in the incidental take of sea turtles based on documented takes in similar fisheries.

Chesapeake Bay Inshore Gillnet Fishery

The Chesapeake Bay inshore gillnet fishery (estimated 45 vessels/persons) targets menhaden and croaker using gillnet gear with mesh sizes ranging from 2.75–5 in (7–12.7 cm), depending on the target species. NMFS includes this fishery on the 2010 AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in similar gear, and the fishery operates during a period of high sea turtle strandings.

Long Island Inshore Gillnet Fishery

The Long Island Sound inshore gillnet fishery (estimated 20 vessels/persons) includes all gillnet fisheries setting nets west of a line from the north fork of the eastern end of Long Island, NY (Orient Point to Plum Island to Fishers Island) to Watch Hill, RI (59 FR 43703, August 25, 1994). NMFS includes this fishery in the 2010 AD because sea turtles are known to occur in the same areas where the fishery operates and takes have been documented in similar gear types.

Mid-Atlantic Gillnet Fishery

The Mid-Atlantic gillnet fishery (estimated 7,596 vessels/persons) targets monkfish, spiny dogfish, smooth dogfish, bluefish, weakfish, menhaden, spot, croaker, striped bass, large and small coastal sharks, Spanish mackerel, king mackerel, American shad, black drum, skate spp., yellow perch, white perch, herring, scup, kingfish, spotted seatrout, and butterfish. NMFS includes this fishery on the 2010 AD to focus observer coverage during times and in areas where sea turtles are known to occur.

Northeast Sink Gillnet Fishery

The Northeast sink gillnet fishery (estimated ≤6,455 vessels/persons) targets Atlantic cod, haddock, pollock, yellowtail flounder, winter flounder, witch flounder, American plaice, windowpane flounder, spiny dogfish, monkfish, silver hake, red hake, white hake, ocean pout, skate spp, mackerel, redfish, and shad. NMFS includes this fishery on the 2010 AD to focus observer coverage during times and in areas where sea turtles are known to occur, particularly in waters off Massachusetts and waters south of this area.

North Carolina Inshore Gillnet Fishery

The NC inshore gillnet fishery (94 vessels/persons) targets species including, but not limited to, 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. NMFS includes this fishery on the 2010 AD because the fishery overlaps spatially with areas used by sea turtles, often at relatively high densities and high takes have been previously documented. A more extensive, longer-term observer program is needed to adequately assess the extent and impact of the all components of the inshore North Carolina gillnet fishery on sea turtles.

Southeast Atlantic Gillnet Fishery

The Southeast Atlantic gillnet fishery (779 estimated vessels/persons) targets finfish including, but not limited to, king mackerel, Spanish mackerel, whiting, bluefish, pompano, spot, croaker, little tunny, bonita, jack crevalle, cobia, and striped mullet. NMFS includes this fishery on the 2010 to focus observer coverage during times and in areas where sea turtles are known to occur.

Trap/Pot Fisheries

Atlantic Blue Crab Trap/Pot Fishery

The Atlantic blue crab trap/pot fishery (estimated ≤16,000 vessels/persons) targets blue crab using pots baited with fish or poultry typically set in rows in shallow water. NMFS includes this fishery on the 2010 AD to target observer coverage more specifically to obtain information on sea turtle bycatch and how sea turtles may be interacting with trap/pot gear.

Atlantic Mixed Species Trap/Pot Fishery

The Atlantic mixed species trap/pot fishery (unknown number of vessels/persons) targets species including, but not limited to, 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. This fishery as defined on the MMPA LOF also includes American eel as a target species; however, there is also a Category III American eel trap/pot fishery listed on the LOF. Therefore, NMFS does not consider American eel to be a target species in the Atlantic mixed species trap/pot fishery and will correct this oversight in a future LOF. NMFS includes this fishery in the 2010 AD to target observer coverage more specifically to obtain information on sea turtle interactions and how sea turtles may be interacting with trap/pot gear, particularly in waters off of Massachusetts and waters south of this area, as sea turtles more commonly occur in these areas.

Northeast/Mid-Atlantic American Lobster Trap/Pot Fishery

The Northeast/Mid-Atlantic American lobster trap/pot fishery (estimated 13,000 vessels/persons) targets American lobster primarily with traps, while 2–3 percent of the target species is taken by mobile gear (trawls and dredges). NMFS includes this fishery in the 2010 AD to target observer coverage more specifically to obtain information on sea turtle bycatch and how sea turtles may be interacting with trap/pot gear, particularly in waters off of Massachusetts and waters south of this area, as sea turtles more commonly occur in these areas.

Pound Net/Weir/Seine Fisheries

Mid-Atlantic Haul/Beach Seine Fishery

The Mid-Atlantic haul/beach seine fishery (estimated >221 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. NMFS includes this fishery on the 2010 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.

Mid-Atlantic Menhaden Purse Seine Fishery

The Mid-Atlantic menhaden purse seine fishery (22 estimated vessels/persons) targets menhaden and thread herring using purse seine gear. NMFS includes this fishery on the 2010 AD to focus observer coverage in times and areas of sea turtle distribution and learn more about the interactions between this fishery and sea turtles.

Virginia Pound Net Fishery

The Virginia pound net fishery (estimated 41 vessels/persons) targets

species including, but not limited to, croaker, menhaden, mackerel, weakfish, and spot, using stationary gear in nearshore Virginia waters, primarily in the Chesapeake Bay and its tributaries. NMFS includes this fishery on the 2010 AD to assess interactions between pound net gear and sea turtles and to evaluate the effectiveness of the modified gear. Because some vessels in this fishery may be too small to carry observers, NMFS would consider observing the fishery using both traditional methods as well as an alternative platform.

U.S. Mid-Atlantic Mixed Species Stop Seine/Weir/Pound Net (except the NC roe mullet stop net) Fishery

The Mid-Atlantic mixed species stop seine/weir/pound net fishery (estimated 751 vessels/persons) targets several species, including, but not limited to, weakfish, striped bass, shark, catfish, menhaden, flounder, gizzard shad, and white perch. NMFS includes this fishery on the 2010 AD to better understand the nature and extent of these interactions in the mid-Atlantic.

TABLE 1 – STATE AND FEDERAL COMMERCIAL FISHERIES INCLUDED ON THE 2010 ANNUAL DETERMINATION

Fishery	Years Eligible to Carry Observers
Trawl Fisheries	
Atlantic shellfish bottom trawl	2010–2014
Mid-Atlantic bottom trawl	2010–2014
Mid-Atlantic mid-water trawl (including pair trawl)	2010–2014
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2010–2014
Gillnet Fisheries	
CA halibut, white seabass and other species set gillnet (>3.5 in mesh)	2010–2014
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 in. and <14 in.)	2010–2014
Chesapeake Bay inshore gillnet	2010–2014
Long Island inshore gillnet	2010–2014
Mid-Atlantic gillnet	2010–2014
North Carolina inshore gillnet	2010–2014
Northeast sink gillnet	2010–2014
Southeast Atlantic gillnet	2010–2014
Trap/pot Fisheries	
Atlantic blue crab trap/pot	2010–2014
Atlantic mixed species trap/pot	2010–2014
Northeast/mid-Atlantic American lobster trap/pot	2010–2014
Pound Net/Weir/Seine Fisheries	
Mid-Atlantic haul/beach seine	2010–2014
Mid-Atlantic menhaden purse seine	2010–2014
U.S. mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net)	2010–2014
Virginia pound net	2010–2014

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the

Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual

basis leading to the certification is set forth below.

NMFS has estimated that approximately 65,940 vessels participating in 19 fisheries listed in

Table 1 would be eligible to carry an observer if requested. However, NMFS would only request a fraction of the total number of participants to carry an observer based on the sampling protocol identified for each fishery by regional observer programs. As noted throughout this proposed rule, NMFS would select vessels and focus coverage in times and areas where fishing effort overlaps with sea turtle distribution. Due to the unpredictability of fishing effort, NMFS cannot determine the specific number of vessels that would be requested to carry an observer.

If a vessel is requested to carry an observer, fishers will not incur any direct economic costs associated with carrying that observer. Potential indirect costs to individual fishers required to take observers may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. For effective monitoring, however, observers will rotate among a limited number of vessels in a fishery at any given time and each vessel within an observed fishery has an equal probability of being requested to accommodate an observer. The potential indirect costs to individual fishers are expected to be minimal because observer coverage would only be required for a small percentage of an individual vessel's total annual fishing time. In addition, 50 CFR 222.404(b) states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and was not prepared.

The requirements to carry an observer when requested for those fisheries included on the 2010 AD through this final rule are included under an existing collection-of-information that was approved by the 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) for

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 example, requiring fishing gear modifications such as TEDs, NMFS would first prepare an environmental document as required under NEPA and specific to that action.

This final rule would not affect species listed as threatened or endangered under the Endangered Species Act (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. Including 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.

Literature Cited

Murray, K.T. 2009. Characteristics and magnitude of sea turtle bycatch in US mid-Atlantic gillnet gear. *Endangered Species Research* 8:211–224.

National Marine Fisheries Service. 2009. Draft 2009 Marine Mammal Stock Assessment Reports for the Atlantic Ocean and Gulf of Mexico.

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Dated: May 11, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2010-11856 Filed 5-17-10; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 090508900-91414-02]

RIN 0648-AX75

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Red Snapper Closure

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

ACTION: Temporary rule; interim measures extended.

SUMMARY: NMFS issues this temporary rule to extend the effective date of interim measures to reduce overfishing of red snapper in the South Atlantic implemented by a temporary rule published by NMFS on December 4, 2009 (74 FR 63673). This temporary rule extends the closure of the commercial and recreational fisheries for red snapper in the exclusive economic zone (EEZ) of the South Atlantic as requested by the South Atlantic Fishery Management Council (Council). The intended effect of this rule is to reduce overfishing of red snapper in the South Atlantic.

DATES: The effective date for the interim rule published at 74 FR 63673, December 4, 2009, is extended from June 3, 2010, through December 5, 2010, unless NMFS publishes a superseding document in the **Federal Register**.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) and environmental assessment (EA) may be obtained from Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Karla Gore, telephone: 727-551-5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On December 4, 2009, NMFS published the final temporary rule (74 FR 63673) to implement measures to establish a closure of the commercial