

that grant were to indicate that, in operation, Texas alternate requirements do not satisfy applicable standards.

#### Request for Comments

#### How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (*see* 49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given under **ADDRESSES**.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at <http://dms.dot.gov>. Click on "Help & Information," or "Help/Info" to obtain instructions for filing the document electronically.

#### How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

#### How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

#### Will The Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we also will consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing the final rule, we will consider that comment as an informal suggestion for future rulemaking action.

#### How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You also may see the comments on the Internet. To read the comments on the Internet, go to <http://www.regulations.gov>, and follow the instructions for accessing the Docket.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued on: November 6, 2009.

**O. Kevin Vincent,**  
Chief Counsel.

[FR Doc. E9-27157 Filed 11-17-09; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 222

[Docket No. 0906181067-91356-01]

RIN 0648-XP96

#### 2010 Annual Determination for Sea Turtle Observer Requirement

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

**ACTION:** Proposed rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) publishes its proposed Annual Determination (AD) for 2010, pursuant to its authority under the Endangered Species Act (ESA). Through this proposed AD, NMFS would identify commercial fisheries

operating in state and Federal waters in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that would 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 sea turtle takes, and to determine whether additional measures to address prohibited sea turtle takes may be necessary. Fisheries identified through this process would remain on the AD, and therefore required to carry observers upon NMFS' request, for 5 years.

**DATES:** Comments must be received by December 18, 2009.

**ADDRESSES:** Send comments on the proposed rule by any one of the following methods.

(1) Electronic Submissions: Submit all electronic comments through the Federal eRulemaking portal: <http://www.regulations.gov> (follow instructions for submitting comments).

(2) Facsimile: (301) 713-0376, Attention: 2010 Sea Turtle Annual Determination.

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

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Send comments on the information collection requirements or any other aspects of the collection of information to the Chief of the Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, at the **ADDRESSES** above, and e-mail to [David.Rostker@omb.eop.gov](mailto:David.Rostker@omb.eop.gov), or fax to (202) 395-7285.

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 turtles away from the nesting beach, NMFS considers green 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). Section 11 of the ESA authorizes 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 minimize or prevent 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.

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 uses 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 to propose 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 the final determination 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 the 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 has 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.

#### **Implementation of 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 would 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 would 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 where the facilities for accommodating an observer or carrying out observer functions are so inadequate or unsafe (due to size or quality of equipment, for example) that the health or safety of the observer or the safe operation of the vessel would be jeopardized, would not be required to take observers under this proposed rule. Nonetheless, per Magnuson-Stevens Fishery Conservation and Management Act (MSA) regulations for observers (50 CFR 600.746), a vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage. However, observation techniques using alternative platforms apart from the fishing vessel, but still requiring the cooperation of fishermen, may be employed in such instances as appropriate. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

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.

#### **Sea Turtle Distribution**

##### *Atlantic Ocean and Gulf of Mexico*

Sea turtle species found in waters of the Atlantic Ocean and Gulf of Mexico

include green, hawksbill, Kemp's ridley, leatherback, and loggerhead turtles. The waters off the U.S. East Coast represent important residential, migrating, and foraging habitat for several of these species. Further, the Southeastern U.S. is a major sea turtle nesting area for loggerheads and, to a lesser extent, green and leatherback turtles.

Four species, green, Kemp's ridley, leatherback, and loggerhead turtles, occur seasonally in southern New England and mid-Atlantic continental shelf waters north of Cape Hatteras, North Carolina. The occurrence of these species in these waters is temperature dependent. In general, turtles move up the coast from southern wintering areas as water temperatures warm in the spring. The trend is reversed in the fall as water temperatures decrease. By December, turtles have passed Cape Hatteras, returning to more southern waters for the winter. Hard-shelled species are typically observed as far north as Cape Cod, Massachusetts, whereas more cold-tolerant leatherbacks are observed farther north in northern Gulf of Maine waters in the summer and fall.

Green turtles are found in inshore and nearshore waters from Texas to Massachusetts, the U.S. Virgin Islands, and Puerto Rico. While foraging and developmental habitats also occur in the wider Caribbean, important feeding areas in Florida include the Indian River Lagoon, the Florida Keys, Florida Bay, Homosassa, Crystal River, Cedar Key, and St. Joseph Bay. The bays and sounds of North Carolina also provide important foraging habitat for green turtles, which can occur in those areas in relatively high densities.

In the Atlantic, hawksbills are most common in Puerto Rico and its associated islands and in the U.S. Virgin Islands. In the continental U.S., the species is recorded from all the Gulf States and along the east coast as far north as Massachusetts, but sightings north of Florida are rare. Hawksbills are observed in Florida on the reefs off Palm Beach, Broward, Miami-Dade, and Monroe Counties. Texas is the only other U.S. state where hawksbills are sighted with any regularity.

Kemp's ridleys are distributed throughout waters of the Gulf of Mexico and U.S. Atlantic coast, from Florida to New England. The major nesting area for Kemp's ridleys is in Tamaulipas, Mexico, but some nesting also occurs along the Texas coast.

The second largest nesting aggregation of loggerheads in the world occurs in the southeastern U.S. Loggerheads occur throughout the Atlantic and Gulf of

Mexico, spending significant time in coastal areas.

Adult leatherbacks are capable of tolerating a wide range of water temperatures, and have been sighted along the entire continental coast of the United States as far north as the Gulf of Maine and south to Puerto Rico, the U.S. Virgin Islands, and into the Gulf of Mexico. The central east coast of Florida represents a small, but growing, nesting area for leatherbacks in the western North Atlantic.

#### *U.S. Pacific Ocean*

Leatherback sea turtles are found consistently off the U.S. west coast, usually north of Point Conception, California. Green turtles, loggerhead, and olive ridley sea turtles are rarely observed in the west coast EEZ, but records show that all species have stranded in California and the Pacific Northwest. Leatherbacks are known to migrate to central and northern California from their natal beaches in the Western Pacific to feed on jellyfish. During aerial surveys conducted since the early 1990s, leatherbacks were most often spotted off Point Reyes, south of Point Arena, in the Gulf of the Farallons, and in Monterey Bay. Leatherback turtles usually appear in Monterey Bay and California coastal waters during August and September and move offshore in October and November. Other observed areas of summer leatherback concentration include northern California and the waters off Washington through northern Oregon, offshore from the Columbia River plume.

Green, loggerhead, and olive ridley sea turtles are generally found in waters temperatures above 18 C, which is warmer than the waters off most of California, Oregon, and Washington. Two small populations of green turtles occur in the southern California Bight utilizing the warm water outflows from power plants in San Diego Bay and Alamitos Bay in Long Beach, California. In the eastern Pacific, loggerheads have been reported as far north as Alaska, and as far south as Chile. Occasional sightings are reported from the coasts of Washington and Oregon, but most records are of juveniles off the coast of California. Based upon limited observer records, loggerheads travel into the southern California Bight during El Nino events (or warm water conditions similar to an El Nino). The majority of fishery interactions with loggerheads during El Nino conditions have occurred during the summer. Olive ridleys have been recorded stranded all along the U.S. west coast. Olive ridleys are believed to use warm water currents

along the west coast for foraging. The general distribution of olive ridleys along the U.S. west coast is unknown at this time.

Sea turtles occur throughout the Pacific Islands Region including the State of Hawaii and the U.S. territories of Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI). Green and hawksbill turtles are most common in nearshore waters while leatherbacks, loggerheads, and olive ridleys occur in offshore pelagic waters. Stock structure and population dynamics for some species in this region are poorly understood.

#### **Sea Turtle Strandings**

NMFS reviewed data collected by the Sea Turtle Stranding and Salvage Network (STSSN) between 2003 and 2007 to identify stranding trends and inform development of this proposed rule. Cold stunned, captive-reared, and post-hatchling turtles were not included in the data reviewed.

Between 2003 and 2007, the STSSN along the U.S. Atlantic and Gulf coasts collectively documented strandings of six species: loggerhead, Kemp's ridley, green, leatherback, hawksbill, and olive ridley turtles, with loggerheads consistently representing the highest number of strandings. For the purposes of this review, the U.S. Atlantic and Gulf of Mexico coastline is divided into three regions: (1) Gulf, including all Gulf of Mexico waters from TX through the FL gulf coast, (2) Southeast Atlantic, including U.S. Atlantic waters from FL east coast through NC, and (3) Northeast Atlantic, including all U.S. Atlantic waters from VA through ME. Of the three regions, the Southeast Atlantic consistently records the highest level of strandings during any given month, each year. In each region, as well as collectively, loggerhead sea turtles represent the highest number of annual strandings, followed by Kemp's ridley and leatherback turtles in the Atlantic and green turtles in the Gulf.

Based on the data reviewed, strandings have occurred in each month of the year, in all three regions; however, distinct trends are notable within each region. In the Gulf and Southeast Atlantic regions, strandings consistently occur in every month of the year. In the Gulf region, the highest concentration of strandings occurs from March to August, with a notable peak in April and May. In the Southeast Atlantic region, the highest concentration of strandings occurs from March to November, with a notable peak in May and June. In the Northeast Atlantic region, strandings predominately occur between May and

November of each year, with the highest concentration of strandings between June and September; strandings are not regularly observed in the winter and early spring.

On the U.S. West Coast, strandings are infrequent compared to the Atlantic and Gulf of Mexico coasts predominantly due to oceanographic features (e.g., currents) and species abundance and distribution. Between 2003 and 2007, the STSSN in California documented strandings of three species: green, leatherback, and olive ridley turtles. Green turtles represent the highest number of strandings. Strandings were documented in all months except April; data indicate a peak in strandings between July and October.

In Oregon and Washington, very few strandings were recorded between 2003 and 2007. Green, loggerhead, and olive ridley turtle strandings were recorded from December to March, with no strandings documented from April through November. Prior to 2003, stranded leatherback turtles were recorded in Oregon and Washington.

In the Pacific Islands region, strandings occur throughout the year, primarily green turtles and secondarily hawksbills in Hawaii, Guam, American Samoa, and CNMI.

#### **Addition of Fisheries on the 2010 Annual Determination**

NMFS is proposing to include 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.

As described above, the most recent LOF is used as the universe of commercial fisheries included on the AD. The fishery name, definition, and number of vessels/persons specified on the AD are taken from the most recent final 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 if requested by NMFS. As noted previously, NMFS also has authority to observe fisheries in Federal waters under the MSA, under which NMFS has collected sea turtle bycatch information.

#### **Trawl Fisheries**

Interactions with trawl fisheries are of a particular concern for sea turtles, since forced submergence in any type of restrictive gear could 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 a forced submergence (Lutcavage et al., 1997).

Trawls that are not outfitted with turtle excluder devices (TEDs) may result in forced submergence. Currently, only trawl fisheries capable of catching shrimp and operating south of Cape Charles, VA, and in the Gulf of Mexico as well as trawl fisheries targeting summer flounder south of Cape Charles, VA, are required to use TEDs.

NMFS' Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries ("Strategy"), a gear-based approach to addressing sea turtle bycatch, has identified trawl gear as a priority given our knowledge of the level of bycatch in this gear and the availability of technology that allows sea turtles to escape the trawl net, minimizing injury and mortality. The Strategy is currently evaluating mitigation measures for trawl fisheries that overlap with sea turtles. Several fisheries that NMFS proposes to include on the 2010 AD may be considered for sea turtle conservation measures under the Strategy in a future rulemaking to implement the prohibition of take and to help conserve and recover sea turtles.

Several states included trawl fisheries in their responses to NMFS' request for information and recommendations for the 2010 AD. Massachusetts noted that summer flounder trawlers are known to interact with sea turtles. New York recommended considering bottom otter trawl fisheries given that this is one of the top gear types in terms of pounds landed in Long Island Sound, Peconic Bay, and along the South Shore. New Jersey suggested focusing observer coverage in areas where trawl gear overlaps with sea turtle observations. Maryland reported that interactions between bottom otter trawl gear as well as beam trawl gear and sea turtles are possible in the Atlantic Ocean (0–3 miles (0–4.8 km)) and there have been reports of sea turtles captured in trawl gear. North Carolina ranked trawls operating in ocean waters as their top priority based on NMFS' four criteria. South Carolina noted that both trynets and whelk trawls are of concern. Georgia, Florida, and Alabama all noted trawl fisheries as well. Mississippi highlighted skimmer trawls in their response to NMFS' request for recommendations. Therefore, based on the information provided by states and the best available scientific information, NMFS proposes to include 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. The fishery is managed through Federal and interstate fishery management plans (FMPs).

This fishery is classified as Category III on the MMPA LOF; however, portions of the fishery have been observed at low levels under MSA authority and by the Georgia Department of Natural Resources (GA DNR).

Since 2004, 16 sea turtle takes were reported by NMFS trained observers in the Atlantic sea scallop trawl fishery. Takes of sea turtles in scallop trawl gear have been observed during the months from June through October. One of the 16 sea turtles captured in scallop trawl gear was decomposed indicating it was not killed as a result of the scallop trawl gear in which it was observed. Fourteen of the non-decomposed turtles were loggerhead sea turtles, while one was not identified to species.

In addition, loggerhead sea turtle bycatch in the mid-Atlantic sea scallop trawl fishery, one component of the Atlantic shellfish bottom trawl fishery, was estimated for 2004 and 2005. The average annual bycatch estimates of loggerhead sea turtles in 2004 and 2005 in mid-Atlantic sea scallop trawl gear ranged from 81 to 191 turtles, depending on the estimation methodology used (Murray 2007). GA DNR conducted a limited observer program in the trawl fishery targeting whelk in the late 1990s; 7 turtles (3 Kemp's ridleys, 2 greens, and 2 loggerheads) were taken in 28 observed tows. 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 proposes to include 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  $\leq 1,000$  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 gear is managed by several state and Federal FMPs.

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. Flynets typically range from 80–120 ft (24–36.6 m) in headrope length, with wing mesh sizes of 16–64 in (41–163 cm), following a slow 3:1 taper to smaller mesh sizes in the body, extension, and codend sections of the net. 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. Flynet fishing is no longer permitted in Federal waters south of Cape Hatteras to a line extending from the NC/SC border in order to protect weakfish stocks. 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). Illex squid are also targeted offshore (70–200 fathoms [420–1,200 ft; 128–366 m]) during summer months from May to September.

The Mid-Atlantic bottom trawl fishery and the Mid-Atlantic flynet fishery are currently classified as Category II on the MMPA LOF, which authorizes NMFS to observe these fisheries for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. Between 2003 and 2007, observer coverage as reported in the Marine Mammal Stock Assessment Report (SAR) ranged from a low of 1% to a high of 18.61% depending on target species; see Appendix III of the draft 2009 SAR for additional details (NMFS, 2009). It should be noted that the mid-Atlantic

bottom trawl fishery is defined slightly differently in the SARs (which use 70° W as a boundary) than it is defined here and in the LOF. NMFS will consider changing this definition in a future LOF.

Since 2003, NMFS has documented 50 sea turtle takes (excluding severely decomposed animals) in bottom otter trawl gear in the mid-Atlantic. These takes occurred primarily between October and February, but takes were also reported May through September. In 2007, the observer program created new codes to document the different net types used, including flynets. Seven of the takes were recorded on trips where flynets were indicated as the specific net type used. Loggerhead turtles were the predominant species observed taken, but leatherback turtles were also documented. An estimate of the average annual bycatch of loggerhead sea turtles in mid-Atlantic bottom otter trawl gear during 1996–2004 was completed in 2006. The analysis defined the mid-Atlantic as the region from the shoreline below 41° 30' N./66° W. to the southern extent of the NEFSC observer data collection, around 35° 00' N. lat. and 75° 30' W. long. Estimated average annual bycatch of loggerhead turtles in mid-Atlantic bottom otter trawl gear during 1996–2004 was 616 animals (Murray, 2008).

NMFS proposes to include 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. This fishery consists of both single and pair trawls, which are designed, capable, or used to fish for pelagic species with no portion of the gear designed to be operated in contact with the bottom. The fishery for Atlantic mackerel occurs primarily from southern New England through the mid-Atlantic from January to March and in the Gulf of Maine during the summer and fall (May to December).

The Mid-Atlantic mid-water trawl fishery is currently classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. During 2003–2007, estimated observer coverage year-round in this fishery was 3.5%, 12.16%, 8.4%, 8.9%, and 3.85%, respectively (NMFS 2009); no sea turtle takes were observed.

NMFS proposes to include 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. The skimmer trawl has a rigid “L”-shaped or triangular metal frame with the inboard portion of the frame attached to the vessel and the outboard portion attached to a skid that runs along the seabed.

Skimmer trawl use increased in response to TED requirements for shrimp bottom otter trawls. Skimmer trawls currently have no TED requirement but are subject to tow time limits of 55 minutes from April 1 to October 31 and 75 minutes from November 1 to March 31. Skimmer trawls are used in North Carolina, Florida (Gulf Coast), Mississippi, and Louisiana. There are documented takes of sea turtles in skimmer trawls in North Carolina, and anecdotal reports elsewhere. In North Carolina, there were 150–200+ active vessels per year from 2000–2002 and in Louisiana, skimmer trawls accounted for 37% of the shrimp catch and 63% of the total shrimp trawling effort from 1999–2004. Louisiana skimmer trawl effort averaged about 60,750 trips per year over that period, ranging from about 81,700 trips in year 2000 to 49,000 trips in year 2004. No effort information is available for Mississippi and Florida.

Skimmer trawl effort overlaps with sea turtle distribution, and as noted above, takes have been reported. Although subject to tow times, the magnitude and impact of turtle takes in this fishery are not understood, and no observer program currently exists for this portion of the shrimp fishery. Given the extent this gear is used, NMFS thinks it is important to better understand these interactions.

NMFS is considering including skimmer trawls under the Atlantic Ocean and Gulf of Mexico Sea Turtle Strategy, which may result in a regulation to require TEDs or other protections for sea turtles for all trawl gears as appropriate. Observer coverage to understand the scope and impact of turtle takes by this gear will also be

needed to make well informed management decision on what actions may be necessary to manage this fishery to minimize and prevent sea turtle takes and further sea turtle conservation and recovery.

The Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery is classified as Category III on the MMPA LOF, but mandatory observer coverage under MSA authority began in 2007. The fishery is currently observed at approximately 1% of total fishery effort. NMFS is proposing to include 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**

Sea turtles are vulnerable to entanglement and drowning in gillnets, especially when the gear is left untended. The main risk to sea turtles from capture in gillnet is forced submergence. Entanglement in gillnets can also result in severe abrasions on entangled turtles. Large mesh gillnets (e.g., 10–12 in. (25.4–30.5 cm) stretched mesh) have been documented as effective at capturing sea turtles. Additionally, sea turtles have been documented as entangled in smaller mesh gillnets.

Several states (i.e., CA, NY, NJ, DE, MD, VA, NC, AL) recommended including gillnet fisheries on the 2010 AD. California recommended two small mesh gillnet fisheries. New York recommended considering sink gillnets and runaround gillnets, particularly those operating off the South Shore and Peconic Bay. During the time sea turtles are present in New York waters, gillnets are one of the top gear types in terms of pounds landed along the South Shore. New Jersey recommended observing gillnet fisheries operating in areas that overlap with sea turtle sightings. Delaware identified gillnet gear as a concern based on the potential for interactions. Maryland noted that potential for sea turtle takes exists in gillnet fisheries operating within coastal bays and tidal tributaries, but no takes have been documented. Virginia noted that there are state regulations for gillnets in an effort to conserve and protect sea turtles in their waters. North Carolina ranked large mesh commercial gillnets operating in estuarine waters as a top concern. Alabama noted gillnets in their response to NMFS' request for recommendations. In addition, NMFS' Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries has identified gillnet gear as a high priority.

Therefore, based on the information provided by states and the best available scientific information, NMFS proposes to include the following gillnet fisheries on the 2010 AD.

*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). Net soak duration is typically 8–10, 19–24, or 44–49 hours at a depth ranging from 15–50 fathoms (90–300 ft; 27–91 m) with most sets from 15–35 fathoms (90–210 ft; 27–64 m). No more than 1500 fathoms (9,000 ft; 2,743 m) of gill or trammel net may be fished in combination for CA halibut and angel shark. Fishing occurs year-round, with effort generally increasing during summer months and declining during last the 3 months of the year. The central CA portion of the fishery from Point Arguello to Point Reyes has been closed since September, 2002, following a ban on gillnets inshore of 60 fathoms (360 ft; 110 m). Set gill nets have been prohibited in state waters south of Point Arguello and within 70 fathoms (420 ft; 128 m) or one mile (1.6 km), whichever is less, around the Channel Islands since 1990. The California Department of Fish and Game (CDFG) manages the fishery as a limited entry fishery with gear restrictions and area closures.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery in state waters for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. This fishery was observed at about 17.8% in 2007 and 5% in 2008. No sea turtle takes were observed during 2007 or 2008. NMFS proposes to include 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. Drift

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

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. This fishery was observed in 2003 and 2004, with 10.4% and 11.0% coverage, respectively. No sea turtle takes were observed during 2003 or 2004. NMFS proposes to include 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. The fishery operates between the Chesapeake Bay/Bridge Tunnel and the mainland. The fishery is managed under the Interstate FMPs for Atlantic Menhaden and Atlantic Croaker.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery in state waters for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. NMFS has previously observed this fishery at extremely low levels. NMFS proposes to include 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). Target species include, but are not limited to bluefish, striped bass, weakfish, and summer flounder.

This fishery is classified as Category III on the MMPA LOF and NMFS has not previously required vessels operating in this fishery to carry an observer. NMFS has previously observed this fishery at extremely low levels; no sea turtle takes were observed. NMFS proposes to include 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. The fishery uses drift and sink gillnets, including nets set in a sink, stab, set, strike, or drift fashion, with some unanchored drift or sink nets used to target specific species. The dominant material is monofilament twine with stretched mesh sizes from 2.5–12 in (6.4–30.5 cm), and string lengths from 150–8,400 ft. (46–2,560 m). This fishery operates year-round west of a line drawn at 72° 30' W. long. south to 36° 33.03' N. lat. and east to the eastern edge of the EEZ and north of the North Carolina/South Carolina border, not including waters where inshore gillnet fisheries (i.e., Chesapeake Bay, North Carolina, Long Island Sound inshore gillnet fisheries) operate in bays, estuaries, and rivers. This fishery includes any residual large pelagic driftnet effort in the mid-Atlantic and any shark and dogfish gillnet effort in the mid-Atlantic zone described. The fishing effort is prosecuted right off the beach (6 ft [1.8 m]) or in nearshore coastal waters to offshore waters (250 ft [76 m]).

Gear in this fishery is managed by several Federal FMPs and Interstate FMPs managed by the Atlantic States Marine Fisheries Commission (ASMFC). Fisheries are primarily managed by TACs; individual trip limits (quotas); effort caps (limited number of days at



sea per vessel); time and area closures; and gear restrictions and modifications.

This fishery is classified as Category I on the MMPA LOF, which authorizes NMFS to observe this fishery in state and federal waters for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. During 2003–2007, estimated observer coverage year-round in this fishery was 1%, 2%, 3%, 4%, and 6%, respectively (NMFS, 2009). Since 2003, 12 takes (excluding severely decomposed animals) of loggerhead, leatherback, green, and Kemp's ridley turtles were documented by observers between May and December. From 1995–2006, the average annual bycatch estimate of loggerheads in U.S. mid-Atlantic sink gillnet gear was 350 turtles (Murray 2009). The mid-Atlantic was defined in this analysis as west of 70° W. long. from the shoreline of Cape Cod southward to the southern limit of the observer data collection program (approximately 33° N. lat.), extending westward to the coastline (Murray, 2009). NMFS proposes to include 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. This fishery uses sink gillnet gear, which is anchored gillnet (bottom-tending net) gear fished in the lower one-third of the water column. The dominant material is monofilament twine with stretched mesh sizes from 6–12 in (15–30.5 cm) and string lengths from 600–10,500 ft (183–3,200 m), depending on the target species. Large mesh (10–14 in [25–35.6 cm]) sink gillnets, either tied down or set upright without floats using a polyfoam core floatline, are used when targeting monkfish. The fishery operates from the U.S.-Canada border to Long Island, NY, at 72° 30' W. long. south to 36° 33.03' N. lat. (corresponding with the Virginia/North Carolina border) and east to the eastern edge of the EEZ, including the Gulf of Maine, Georges Bank, and Southern New England, and excluding Long Island Sound or other waters where gillnet fisheries are classified as Category III on the MMPA LOF. Fishing effort occurs year-round, peaking from May to July primarily on continental shelf regions in depths from 30–750 ft

(9–228.6 m), with some nets deeper than 800 ft (244 m).

This fishery is managed by the Northeast Multispecies (Groundfish) FMP. This fishery is also managed by the Atlantic Large Whale Take Reduction Plan (ALWTRP) and the Harbor Porpoise Take Reduction Plan (HPTRP) to reduce the risk of entanglement of right, humpback, and fin whales, and harbor porpoises, respectively. The fishery is primarily managed through TAC limits; individual trip limits (quotas); effort caps (limited number of days at sea per vessel); time and area closures; and gear restrictions.

This fishery is classified as Category I on the MMPA LOF, which authorizes NMFS to observe this fishery in state and Federal waters for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. During 2003–2007, estimated observer coverage year-round in this fishery was 3%, 6%, 7%, 4%, 7%, respectively (NMFS, 2009). Five sea turtle takes were observed during this time. NMFS proposes to include 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. This fishery is managed under state and ASMFC interstate FMPs, applying net and mesh size regulations, and seasonal area closures in the Pamlico Sound Gillnet Restricted Area (PSGNRA).

Gillnet fisheries operating in inshore and inland waters of North Carolina are currently not observed except in a limited area. An ESA section 10(a)(1)(B) permit requires monitoring the Pamlico Sound summer flounder gillnet fishery. However, extensive gillnet activity occurs throughout the inshore and inland waters of North Carolina (e.g., Core Sound/Cape Fear area, Roanoke and Albemarle Sounds); effort in some areas has never been observed, but other areas have had limited coverage, which was authorized under the MMPA (this fishery is listed as Category II on the MMPA LOF). Gillnet activity overlaps

spatially with areas utilized by sea turtles, often at relatively high densities. Additionally, the likelihood of significant injury or mortality to sea turtles when taken by this gear is high. NMFS recently conducted a limited observer program in the southern flounder gillnet fishery in Core Sound, which was previously unobserved. Several sea turtles (green, Kemp's ridley, and loggerhead) were observed taken in the fishery. Take levels were highly variable, but generally high, with many observed trips taking no sea turtles, and other trips having as many as five takes. 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. Therefore, NMFS is proposing to include this fishery on the 2010 AD.

#### *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. This fishery does not include gillnet effort targeting sharks as part of the Southeastern U.S. Atlantic shark gillnet fishery. This fishery uses gillnets set in sink, stab, set, or strike fashion. The fishery operates in waters south of a line extending due east from the North Carolina-South Carolina border and south and east of the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico. The majority of fishing effort occurs in Federal waters since South Carolina, Georgia, and Florida prohibit the use of gillnets, with limited exceptions, in state waters.

Fishing for king mackerel, Spanish mackerel, cobia, cero, and little tunny in Federal waters is managed under the Coastal Migratory Pelagic Resources FMP. None of the other target species are Federally-managed under the MSA. In state waters, state and ASMFC Interstate FMPs apply.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery in state and federal waters for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. NMFS has previously observed this fishery at moderate levels, primarily focused on target catch and bycatch species other than sea turtles. NMFS proposes to include this fishery on the 2010 to focus observer coverage during times and in areas where sea turtles are known to occur.



### Trap/Pot Fisheries

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

Several states included trap/pot fisheries in their responses to NMFS' request for information and recommendations for the 2010 AD. Massachusetts listed pots (lobster, fish, whelk) as a gear type known to interact with sea turtles. New York recommended that fish, lobster, and crab pots be considered. Maryland ranked the commercial crab pot fishery that operates April through December as having a high possibility for interacting with sea turtles and a greater possibility for injury compared to other gear types in Maryland state waters. Maryland also ranked several other commercial pot fisheries (e.g., conch and fish) with a lower potential to interact with sea turtles. Maryland noted reports of sea turtles getting their heads caught in the gear while eating bait out of the trap/pot. Delaware included conch and blue crab trap/pot fisheries as having potential interactions with sea turtles where effort overlaps with sea turtle distribution. Both South Carolina and Florida included trap/pot fisheries in their recommendations and noted the potential for using an alternative platform program to observe this gear type.

Therefore, NMFS proposes to include the following four trap/pot fisheries, focusing on those fisheries or components of fisheries operating south of Massachusetts, as sea turtles more commonly occur in this area, on the 2010 AD.

#### *Atlantic Blue Crab Trap/Pot Fishery*

The Atlantic blue crab trap/pot fishery (estimated  $\leq 16,000$  vessels/persons) targets blue crab using pots baited with fish or poultry typically set in rows in shallow water. The pot position is marked by either a floating or sinking buoy line attached to a surface buoy. The fishery occurs year-round from the south shore of Long Island at 72 30' W. long. in the Atlantic

and east of the fishery management demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105), including state waters. The fishery is managed under state FMPs.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. NMFS has not observed this fishery, but has documented 3 sea turtle takes in blue crab trap/pot gear in Virginia during the months of May and June. One of the events involved a leatherback and two involved loggerheads (STDN, unpublished data). NMFS proposes to include 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. The fishery includes all trap/pot operations from the Maine-Canada border south through the waters east of the fishery management demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105), but does not include the following trap/pot fisheries (as defined on the MMPA LOF): Northeast/Mid-Atlantic American lobster trap/pot; Atlantic blue crab trap/pot; Florida spiny lobster trap/pot; Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot; U.S. Mid-Atlantic eel trap/pot fisheries; and the Southeastern U.S. Atlantic, Gulf of Mexico golden crab fishery (68 FR 1421, January 10, 2003). The fishery is managed under various Interstate and Federal FMPs.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery in state and Federal waters for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. NMFS has previously observed this fishery at extremely low

levels; no sea turtle takes have been documented by fishery observers. However, the NMFS STDN has documented 9 leatherback entanglements in trap/pot gear targeting sea bass in Massachusetts during the month of August from 2003 to 2008 (STDN, unpublished data). From 2003–2008, the STDN documented 1 green, 4 loggerhead, and 8 leatherback turtle takes in trap/pot gear targeting whelk in MA, VA, and NJ during May, June, July, August, and October.

NMFS is proposing to include 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). The fishery operates in inshore and offshore waters from Maine to New Jersey and may extend as far south as Cape Hatteras, NC. Approximately 80 percent of American lobster is harvested from state waters; therefore, the ASMFC has the primary regulatory role. The fishery is managed in state waters under the ASMFC Interstate FMP and in Federal waters under the Atlantic Coastal Fisheries Cooperative Management Act.

This fishery is classified as Category I on the MMPA LOF, which authorizes NMFS to observe this fishery in state and Federal waters for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. NMFS has previously observed this fishery at extremely low levels; no sea turtle takes have been observed. However, NMFS STDN has documented 27 leatherback turtle entanglements in this fishery operating in ME, MA, and RI. These entanglements have occurred between June and October (STDN, unpublished data).

NMFS is proposing to include 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

Pound net, weir, and seine fisheries may use mesh similar to that used in gillnets, but the gear is prosecuted differently from traditional gillnets. For example, pound net leaders have a mesh component similar to a gillnet; sea turtles have been documented entangled in pound net leaders. Pound net leaders in the Virginia portion of the Chesapeake Bay are subject to requirements designed to reduce sea turtle bycatch. Purse seines and weirs also have the potential to entangle and drown sea turtles.

Several states included pound net/weir/seine fisheries in their responses to NMFS' request for information and recommendations for the 2010 AD. Massachusetts listed pound nets/weirs as a gear type known to interact with sea turtles. Maryland noted that sea turtles have been documented alive and uninjured in the pounds, but none have been documented in pound net leaders. Virginia recognized both historical observations of interactions in this fishery as well as current regulations in the fishery (69 FR 24997, May 5, 2004; 71 FR 36024, June 23, 2006). North Carolina noted pound nets operating in estuarine waters in their recommendations.

Therefore, based on the information provided by states and the best available scientific information, NMFS proposes to include the following four pound net/weir/seine fisheries on the 2010 AD.

#### *Mid-Atlantic Haul/Beach Seine Fishery*

The Mid-Atlantic haul/beach seine fishery (estimated  $\leq 221$  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. The beach seine system also uses a bunt and a wash net that are attached to the beach and extend into the surf. The beach seines soak for less than 2 hours. The fishery occurs in waters west of 72° 30' W. long. and north of a line extending due east from the North Carolina-South Carolina border. Fishing on the Outer Banks, NC, occurs primarily in the spring (April to June) and fall (October to December). In the Chesapeake Bay, this gear has been historically fished in the southwest portion of the Bay with some effort in the northwest portion. Effort begins to increase in early May, peaks in early/mid-June, and continues into July. During this time, based on

historical data from Virginia, approximately 100 haul seine trips occur.

The fishery is managed under the Interstate FMPs for Bluefish and for Atlantic Striped Bass of the Atlantic Coast from Maine through North Carolina, and is subject to Bottlenose Dolphin Take Reduction Plan implementing regulations.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. NMFS has previously observed this fishery at low levels; no sea turtle takes have been observed. NMFS proposes to include 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. Most sets occur within 3 mi (4.8 km) of shore with the majority of the effort occurring off North Carolina from November to January, and moving northward during warmer months to southern New England. The fishery is managed under the Interstate FMP for Atlantic Menhaden. In the Chesapeake Bay, this fishery operates to a limited extent during a period of high sea turtle strandings (May and June).

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. NMFS recently began observing the fishery at low levels. NMFS proposes to include 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.

Pound net gear includes a leader posted perpendicular to the shoreline and extending outward to the "heart," which funnels the fish into the pound, where the catch accumulates. This fishery includes all pound net effort in Virginia State waters, including waters inside the Chesapeake Bay. The fishery is managed under Interstate FMPs for Atlantic Croaker and Spot.

The Virginia pound net fishery is currently classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery for marine mammal interactions, and to collect information on sea turtles should a take occur on an observed trip. Loggerhead, Kemp's ridley, leatherback, and green turtles have been observed taken in this fishery. Between 2002 and 2004, approximately 2,650 surveys of leaders were completed in the Virginia pound net fishery; 27 takes of sea turtles were recorded during the survey.

NMFS currently requires the use of a modified pound net leader in certain areas of the VA Chesapeake Bay to reduce entanglements of sea turtles in this gear type (71 FR 36024, June 23, 2006). This fishery operates at the same time as historically elevated sea turtle strandings. NMFS proposes to include 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. The fishery uses fixed or staked net gear (pound net, weir, staked trap) from Nantucket Sound to Chesapeake Bay (60 FR 31681, June 16, 1995); the Virginia pound net and the NC roe mullet stop net fisheries are not included as part of this fishery.

This fishery is classified as Category III on the MMPA LOF and has never been observed. However, sea turtle takes have been documented in pound net gear in NY, MD, VA, and NC by NMFS, STSSN, and other researchers. NMFS proposes to include this fishery on the 2010 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
<b>Trawl Fisheries</b>	
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
<b>Gillnet Fisheries</b>	
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
<b>Trap/pot Fisheries</b>	
Atlantic blue crab trap/pot	2010–2014
Atlantic mixed species trap/pot	2010–2014
Northeast/mid-Atlantic American lobster trap/pot	2010–2014
<b>Pound Net/Weir/Seine Fisheries</b>	
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. Therefore, 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'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.

This proposed rule would amend an existing collection-of-information that was approved by the Office of Management and Budget (OMB) under OMB control number 0648–0593. This requirement will be submitted to OMB for approval. This proposed rule would add an estimated 853 participants and an estimated maximum 60 burden hours to the associated information collection.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the

burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to (enter office name) at the **ADDRESSES** above, and e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395–7285.

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 proposed 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 proposed rule would not make any significant change in the management of fisheries included on the AD, and therefore, this proposed 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 proposed 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 proposed rule would not affect the conclusions of those opinions. The inclusion of fisheries on the AD is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, requiring modifications to fishing gear and/or practices, NMFS would review the action for potential adverse effects to listed species under the ESA.

This proposed rule would have no adverse impacts on sea turtles and may have a positive impact on sea turtles by improving knowledge of sea turtles and

the fisheries interacting with sea turtles through information collected from observer programs.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

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**Janes W. Balsiger,**

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