§ 222.401 Observer requirement.

Any United States fishing vessel, either commercial or recreational, which operates within the territorial seas or exclusive economic zone of the United States or on the high seas, or any fishing vessel that is otherwise subject to the jurisdiction of the United States, operating in a fishery that is identified through the annual determination process specified in §222.402 must carry aboard a NMFS-approved observer upon request by the NMFS Assistant Administrator, in consultation with NMFS Regional Administrators and Science Center Directors, as appropriate. NMFS and/or interested cooperating entities will pay direct costs for the observer. Owners and operators must comply with observer safety requirements specified at 50 CFR 600.725 and 50 CFR 600.746 and the terms and conditions specified in the written notification.

§ 222.402 Annual determination of fisheries to be observed; notice and comment.

(a) The Assistant Administrator, in consultation with Regional Administrators and Science Center Directors, will make an annual determination identifying which fisheries the agency intends to observe. This 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.

(b) The Assistant Administrator shall publish the proposed determination and any final determination in the Federal Register. Public comment will be sought at the time of publication of the proposed determination. In addition, a written notification of the final determination will be sent to the address specified for the vessel in either the NMFS or state fishing permit.