

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
East Tributary .....	Approximately 2,000 feet upstream of Rest Home Road. At the confluence with McLin Creek .....	+942 .....	+943	Catawba County (Unincorporated Areas), City of Conover.
McLin Creek .....	Approximately 1,000 feet upstream of Keisler Road Southeast.	None .....	+943	
Geitner Branch .....	At the confluence with Henry Fork .....	+887 .....	+982	Catawba County (Unincorporated Areas), City of Hickory.
Long Creek .....	Approximately 1,900 feet upstream of 7th Avenue Southwest. At the confluence with McLin Creek .....	None .....	+890	
Mull Creek .....	Approximately 1,400 feet upstream of Railroad.	None .....	+1,080	Catawba County (Unincorporated Areas), City of Claremont, City of Conover.
	Approximately 1,000 feet upstream of the confluence with Lyle Creek. Approximately 500 feet upstream of 9th Avenue Northeast.	+861 .....	+860	
		None .....	+988	Catawba County (Unincorporated Areas), City of Claremont, City of Conover.
		+820 .....	+819	
		None .....	+1,002	

\* National Geodetic Vertical Datum.

# Depth in feet above ground.

+ North American Vertical Datum.

#### ADDRESSES

##### Catawba County (Unincorporated Areas)

Maps are available for inspection at the Catawba County Planning and Zoning Department, 100 A Southwest Boulevard, Newton, North Carolina.

Send comments to Mr. Tom Lundy, Catawba County Manager, P.O. Box 389, Catawba, North Carolina 28658.

##### City of Claremont

Maps are available for inspection at the City of Claremont Planning Department, 3288 East Main Street, Claremont, North Carolina.

Send comments to The Honorable Glenn A. Morrison, Mayor of the City of Claremont, 3288 East Main Street, Claremont, North Carolina 28610.

##### City of Conover

Maps are available for inspection at the Conover City Hall, 101 First Street East, Conover, North Carolina.

Send comments to The Honorable Bruce Eckard, Mayor of the City of Conover, P.O. Box 549, Conover, North Carolina 28613.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 13, 2006.

**David I. Maurstad,**

*Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E6-21681 Filed 12-19-06; 8:45 am]

**BILLING CODE 9110-12-P**

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** NMFS proposes a regulation to require vessels in state and federal fisheries operating in the territorial seas or exclusive economic zone of the United States that are identified through the annual determination process specified in the rule to take observers upon NMFS request. NMFS proposes this measure to learn more about sea turtle interactions with fishing operations, to evaluate existing measures to reduce sea turtle takes, and to determine whether additional measures to address sea turtle takes may be necessary. NMFS will pay the direct costs of the observer. NMFS also proposes to extend the number of days from 30 to 180 that the agency may place observers in response to an appropriate determination by the Assistant Administrator under its existing regulations.

**DATES:** Written comments must be received on or before February 20, 2007.

**ADDRESSES:** Comments on this proposed rule and requests for copies of the Environmental Assessment and Regulatory Impact Review (EA/RIR) should be addressed to the Chief, Marine Mammal and Turtle Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Tanya Dobrzynski, (301) 713-2322.

#### SUPPLEMENTARY INFORMATION:

##### Purpose

Under the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531 *et seq.*, NMFS is authorized to implement programs to conserve marine life listed as endangered or threatened.

All sea turtles that occur in U.S. waters are listed as either endangered or

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[061107292-6292-01;110306A]

RIN 0648-AU81

#### Sea Turtle Conservation; Observer Requirement for Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

threatened under the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531 *et seq.*. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermodochelys 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 sea 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. 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 killing, injuring, capturing, harming and harassing), even 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 223.306. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to section 7 or 10, respectively, of the ESA. 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 a modified gear or modified fishing practice 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 remains unauthorized.

The most effective way for NMFS to learn more about sea turtle-fishery interactions is to place observers aboard fishing vessels. NMFS is proposing this regulation to establish procedures under 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. NMFS will pay the direct costs (e.g., salary, insurance) for the observer. 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 determine whether

incidental takes are occurring, to evaluate whether existing measures are minimizing or preventing interactions, and to determine whether additional measures are needed to conserve turtles.

#### Other Procedures for Observer Placement

NMFS has established a regulatory procedure to place observers on vessels contingent upon a determination by the NMFS Assistant Administrator that the unauthorized take of sea turtles may be likely to jeopardize their continued existence. 50 CFR 223.206(d) (4). In this regulation, NMFS limited observer coverage requirements within a fishery to 30 days. NMFS has used this procedure to address immediate observer needs when fishery activity and relatively high sea turtle strandings have occurred simultaneously in a particular area. However, these temporary observer requirements are designed to respond to acute problems, and not for the design and implementation of monitoring programs that yield statistically valid information, which is the purpose of the observer requirements contained in this proposed rule. Further, because 30 days does not always provide the opportunity to investigate the cause of an event, such as elevated sea turtle strandings, NMFS is also proposing that observer coverage requirements under 50 CFR 223.206(d)(4) may remain effective for 180 days, with a possible 60-day extension. The combined 240 days is consistent with the emergency regulatory provision in section 4(b)(7) of the ESA.

As a condition of authorizing incidental take in certain fisheries, NMFS has also implemented observer coverage requirements under the authority of the ESA on a fishery-by-fishery basis, such as in the shrimp trawl, summer flounder trawl, and Virginia pound net fisheries. These requirements have been implemented only after data from strandings, temporary observer coverage, or other sources indicated that prohibited sea turtle takes were occurring, and as part of a regulatory program to address the sea turtle takes in that fishery.

NMFS has also placed observers on federally-managed vessels under the Magnuson-Stevens Fishery Conservation and Management Act, as amended in 1996 (Magnuson-Stevens Act), and the Marine Mammal Protection Act, as amended in 1994 (MMPA), to document fish bycatch and incidental mortality and serious injury of marine mammals, respectively. The Magnuson-Stevens Act allows NMFS to require observers on fisheries managed

under a Federal fishery management plan, while the MMPA allows NMFS to require observers in both Federal and non-federal fisheries depending on the determined level of interaction between fisheries and marine mammals. Secondary to collecting information on fish and marine mammal bycatch through placement of observers on fishing vessels via the Magnuson-Stevens Act and MMPA, NMFS has also collected data on sea turtle interactions in fisheries.

However, there are several limitations and restrictions to using the MMPA or Magnuson-Stevens Act to place observers to monitor potential sea turtle interactions. The Magnuson-Stevens Act only provides NMFS authority to require observers on vessels in fisheries managed under a Federal fishery management plan. Thus, the authority primarily covers fisheries operating in Federal waters. The MMPA only allows NMFS to require observers on fisheries that have been listed on the annual List of Fisheries as Category I (where incidental mortality and serious injury of marine mammals is considered "frequent") and Category II (where incidental mortality and serious injury of marine mammals is considered "occasional") (16 U.S.C. 1387(c)), but not Category III (where there is a remote likelihood of or no known incidental mortality and serious injury of marine mammals), under which the majority of fisheries are listed. Given that some state and Category III fisheries may be a concern for sea turtle takes, neither the MSA nor the MMPA provides broad enough authority to monitor fisheries that are likely to incidentally take sea turtles. Additionally, because NMFS has largely relied on the MMPA to monitor non-federal fisheries, many monitoring programs are designed primarily to monitor marine mammal bycatch in fishing gear and not necessarily to optimize observation of sea turtle takes. For instance, the sampling regime for marine mammals may not adequately cover times and areas where sea turtle interactions are most likely to occur. Due to observer sampling designs that focus on marine mammal takes, the use of MMPA authority to monitor fisheries for sea turtle bycatch is not optimal. To obtain statistically representative data on sea turtle takes in various fisheries, NMFS must design sampling programs based on sea turtle distribution and abundance and directed toward those gear types and fisheries that are a priority concern for sea turtle recovery.

NMFS has also relied on using voluntary observer coverage to obtain data in several non-federally managed fisheries. For example, from November

1 - 20, 1999, 56 dead sea turtles washed ashore in a small area of Pamlico Sound, North Carolina, in the vicinity of Hatteras and Ocracoke Inlets. Thirty-five of the sea turtles were Kemp's ridleys, the most endangered species of sea turtle. Many sink gillnet fishing vessels were operating in the vicinity. North Carolina state observers were placed on a limited number of the gillnet boats to monitor sea turtle interactions. Because both state and NMFS' observer placement was voluntary, many of the fishermen elected not to carry observers, which resulted in limited coverage in areas where sea turtle interactions were believed most likely to occur. Adequate sampling occurred only after North Carolina received an ESA section 10(a)(1)(B) incidental take permit (67 FR 67150, November 4, 2002) and observer coverage was a requirement of the permit. These events in North Carolina highlight that a voluntary observer program limits the extent of coverage and hinders the collection of reliable data.

#### Sea Turtle/Fisheries Interactions

Numerous gear types have been implicated in takes of sea turtles along the Atlantic, Gulf of Mexico, and Pacific coasts. Because the issue of incidental takes is largely due to the type of fishing gear used, commercial and recreational fisheries in state and federal waters may take sea turtles. Data available on the extent of sea turtle interactions vary by gear type, area, and season. Nonetheless, certain types of gear are more prone to incidentally capturing sea turtles than others, depending on the way the gear is fished and the time and area within which it is fished.

Fisheries that use, for example, trawls, gillnets, seines, pound nets, traps, pots, dredges, longlines, and hook and line are potential sources of sea turtle take. Incidental take has been documented in these gear types where the distribution of sea turtles and fisheries overlaps. For example, NMFS has used alternative monitoring platforms to observe the VA pound net fishery. This monitoring revealed that sea turtle takes are a concern in the VA pound net fishery. As a result, NMFS has implemented management measures aimed at reducing sea turtle interactions in pound net leaders in the southern portion of the Chesapeake Bay from May 6–July 15 of each year, when sea turtles are known to be present (69 FR 24997, May 5, 2004). NMFS conducted an ESA section 7 consultation on the pound net fishery and determined that the fishery with the management measures was not likely to jeopardize sea turtles and the agency was then able to authorize

incidental take in the fishery. While these measures may be reducing the number of sea turtle takes in pound nets, sea turtle strandings in the area have continued despite the management measures. Other fisheries, such as inshore gillnet and purse seine fisheries in the area, may also be contributing to the problem and need to be further evaluated.

There are similar examples in other areas around the United States where more comprehensive and targeted observer coverage on fishing vessels is needed to better grasp and address the problem of sea turtle takes incidental to fishing activities, such as the shrimp fishery in the state and federal waters of the southeast United States and the Gulf of Mexico. This proposed rule would enable NMFS to monitor gear types, such as try nets and skimmer trawls, used in this fishery, which are not currently required to use turtle excluder devices but that have been documented to interact with sea turtles. Pot/trap and gillnet fisheries in the state waters of the U.S. have also been documented to interact with sea turtles; therefore, more information is needed on potential sea turtle interactions in these gear types/fisheries to better evaluate them. In addition, long-term, comprehensive coverage is needed to fill information gaps on sea turtle takes.

Thus, NMFS proposes to amend the ESA regulations to specify that NMFS may place observers on recreational or commercial fishing vessels. Consistent, regular monitoring via placement of observers on fishing vessels is needed to gather useful data on sea turtle takes and, where necessary, to evaluate existing measures and develop new management measures to reduce sea turtle take in certain gear types. This proposed action, issued under the authority of the ESA, is necessary to implement the prohibitions of take of listed species and to conserve sea turtles listed as threatened or endangered.

#### Observer Program Design

The design of any observer program implemented under this rule, 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 in the distribution and placement of observers among fisheries identified in annual determinations and vessels in those particular fisheries:

- (1) The requirements to obtain the best available scientific information;
- (2) The requirement that assignment of observers is fair and equitable 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.

Consistent with 16 U.S.C. 1881(b), 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 rule.

Observer programs designed or carried out in accordance with this regulation 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 part 600), and other relevant policies.

#### Annual Determination Process

The Assistant Administrator for Fisheries, NOAA (AA) will make an annual proposed and final determination identifying which fisheries may require observer coverage to monitor potential interactions with sea turtles. The determination will be 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.

The AA will use the most recent version of the annually published MMPA List of Fisheries (LOF) as the universe of commercial fisheries for consideration in addition to known information on non-commercial fisheries in a given area. The LOF includes all known state and federal commercial fisheries that occur in U.S. waters. The categorization scheme of fisheries on the LOF would not be relevant to this process; all fisheries in the LOF would be used as the universe of state and federal commercial fisheries to be considered for monitoring under this proposed rule. Unlike the LOF process, recreational fisheries likely to interact with sea turtles on the basis of the best available information may also

be included in the determination of fisheries to be monitored under this rule.

On an annual basis, the AA, in consultation with Regional Administrators and Science Center Directors, will determine which fisheries NMFS intends to monitor. The fisheries considered for monitoring under this proposed rule will be published as both a proposed and final determination in the **Federal Register**. Notice of the proposed determination will also be 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 any 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 is needed to obtain sufficient scientific data, NMFS must include the fishery in the AA's annual proposed determination again prior to the end of the fifth year. As part of its annual determination, NMFS will include, to the extent practicable, information on the fisheries or gear types to be sampled, geographic and seasonal scope of coverage, or any other relevant information. A 30-day delay in effective date for implementing observer coverage will follow the annual determination, except for those fisheries included in earlier annual determinations within the previous five years.

The timing of this process should be coordinated to the extent possible with the annual LOF publication process, as specified in 50 CFR 229.8.

#### Classification

The AA has determined that this proposed rule is consistent with the ESA and with other applicable law.

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA prepared an environmental assessment for this proposed rule. A copy of the EA is available (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

For the purpose of this certification, all fishermen affected by this rule will

be considered individual small entities. Given the nature of sampling programs and limited NMFS resources, this rule will likely affect less than one hundred fishermen at any given time.

Individual small entities will incur no direct costs for complying with this observer requirement as NMFS will pay the direct costs associated with observer coverage (e.g., observer and related expenses). Potential indirect costs to individual small entities required to take observers under this rule may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. For all these potential indirect costs, it is important to note that, due to limited resources and sampling protocols, effective monitoring will rotate observers among a limited number of vessels in a fishery at any given time. Thus, the potential indirect costs to individual small entities further described below are expected to be minimal since observer coverage would only be required for a small percentage of an individual's total annual fishing time.

Lost space on deck for catch is a potential indirect cost to small entities. The indirect costs would potentially be less room to store catch or to house another active fishermen. However, in accordance with Observer Health and Safety standards, vessels too small to accommodate an observer will not be required to take an observer under this rule. Thus, the individuals most likely to be affected by this indirect cost, will not likely be required to accommodate an observer.

Lost bunk space is a potential cost in that a vessel may need to limit the number of working fishermen onboard to accommodate an observer for overnight trips. While this could result in lost fishing effort, and therefore lost catch, this would only be a potential cost to that subset of fishing vessels for which overnight fishing trips are a regular occurrence. Furthermore, given that larger vessels are usually used for fishing involving multi-day trips, the circumstances in which an observer would significantly displace fishing effort due to lost bunk space are not expected to occur with frequency. Thus, for this and the reasons stated above, the potential indirect cost of lost bunk space to individual small entities resulting from this rule is expected to be minimal.

Lost fishing time due to time needed to process sea turtle bycatch data is another potential indirect cost to fishermen of this observer requirement. However, while individually significant, sea turtle bycatch events are generally rare occurrences. Thus, the need to

process such data is not expected to occur on a frequent basis, rendering this an insignificant impact on individual fishermen.

This rule proposes an annual notification process whereby the Assistant Administrator for Fisheries (AA) would make an annual determination identifying which fisheries require observer coverage for the purpose of monitoring potential sea turtle takes. The determination will be based on the best available commercial and biological data and will be published in the **Federal Register** as both proposed and final notices to the public that the AA is implementing the requirements specified in this section. A 30-day delay in effective date for implementing observer coverage will follow the annual notification, except for those fisheries that were listed in the preceding annual notification or where the AA has determined that there is good cause to make the rule effective without a 30-day delay. Annual notification will include, but not be limited to, information on the fisheries to be sampled, geographic and seasonal scope, and level of coverage.

For the reasons stated herein, the proposed rule to establish mandatory observer coverage is not likely to impose a significant economic impact on a substantial number of small entities.

This proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This proposed rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action to the appropriate officials of affected state, local, and/or tribal governments to solicit their input on the development of the observer program in this proposed rule.

#### List of Subjects

##### 50 CFR Part 222

Administrative Practice and Procedure, Endangered and threatened species, Exports, Imports, Marine mammals.

##### 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: December 14, 2006.

#### Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR parts 222 and 223 are proposed to be amended as follows:

**PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES**

1. The authority citation for part 222 is amended by deleting Section 222.403 also issued under 16 U.S.C. 1361 *et seq.*

**Authority:** 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*

2. New subpart D is added to read as follows:

**Subpart D—Observer Requirement**

Sec.

- 222.401 Observer requirement.  
222.402 Annual determination of fisheries to be observed; notice and comment.  
222.403 Duration of selection; effective date.  
222.404 Observer program sampling.

**Subpart D Observer Requirement****§ 222.401 Observer requirement.**

Any commercial or recreational fishing vessel which operates within the territorial seas or exclusive economic zone of the United States 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 or a NMFS Regional Administrator. NMFS will pay direct costs for the observer. Owners and operators must comply with observer safety requirements specified at 50 CFR 600.745 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 following criteria:

(1) The extent to which the fishery operates in the same waters and at the same time as sea turtles are present;

(2) The extent to which:

(i) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(ii) 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

(3) The extent to which 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 in the **Federal Register** notice and seek comment from the public. In addition,

a written notification of the proposed determination will be sent to the address specified for the vessel in either the NMFS or state fishing permit application, or to the address specified for registration or documentation purposes, or upon written notification otherwise served on the owners or operator of the vessel. Additionally, NMFS will notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and any other means as appropriate. The proposed and final determinations will include, to the extent practicable, information on fishing sector, targeted gear type, target fishery, temporal and geographic scope of coverage, or other information, as appropriate.

(c) Fisheries listed on the most recent annual Marine Mammal Protection Act List of Fisheries in any given year, in accordance with 16 U.S.C. 1387, will serve as the universe of commercial fisheries to be considered for inclusion in the annual determination. Select recreational fisheries suspected of interacting with sea turtles may also be included in the annual determination.

(d) Publication of the proposed and final determinations should be coordinated to the extent possible with the annual Marine Mammal Protection Act List of Fisheries process as specified at 50 CFR 229.8.

(e) Inclusion of a fishery included in a proposed or final determination does not constitute a conclusion by NMFS that those participating in the fishery are illegally taking sea turtles.

**§ 222.403 Duration of selection; effective date.**

(a) Fisheries included in the final annual determination in a given year will remain eligible for observer coverage under this rule for five years, without need for NMFS to include the fishery in the intervening proposed annual determinations, to enable the design of an appropriate sampling program and to ensure collection of scientific data. If NMFS wishes to continue observations beyond the fifth year, NMFS must include the fishery in the proposed annual determination and seek comment, prior to the expiration of the fifth year.

(b) A 30-day delay in effective date for implementing observer coverage will follow the annual notification, except for those fisheries that were included in a previous determination within the preceding five years.

**§ 222.404 Observer program sampling.**

(a) During the program design, NMFS would be guided by the following standards in the distribution and

placement of observers among fisheries and vessels in a particular fishery:

(1) The requirements to obtain the best available scientific information;

(2) The requirement that assignment of observers is fair and equitable 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.

(b) Consistent with 16 U.S.C. 1881(b), 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 rule.

**PART 223—THREATENED MARINE AND ANADROMOUS SPECIES**

1. The authority citation for part 223 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

2. In § 223.206, the second sentence of paragraph (d)(4)(iv) is revised to read as follows:

**§ 223.206 Exceptions to prohibitions relating to sea turtles.**

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(iv) *Procedures.* \* \* \* An emergency notification will be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each, except that emergency placement of observers will be effective for a period of up to 180 days and may be renewed for an additional period of 60 days. \* \* \*

\* \* \* \* \*

[FR Doc. E6–21739 Filed 12–19–06; 8:45 am]

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