

commercial interest to the requester is not sufficiently large in comparison with the public interest in disclosure to render the disclosure one that is primarily in the commercial interest of the requester.

(d) DOT furnishes documents without charge or at a reduced charge when the official having initial denial authority determines that the request concerns records related to the death of an immediate family member who was, at the time of death, a DOT employee.

(e) DOT furnishes documents without charge or at a reduced charge if the official having initial denial authority determines that the request is by the victim of a crime who seeks the record of the trial at which the requester testified.

(f) DOT does not assess the following fees when DOT fails to comply with the time limits under §§ 7.31 or 7.33 and no unusual or exceptional circumstances (see § 7.34(a) and (c)) apply to the processing of the request or appeal:

- (1) Search fees otherwise chargeable under § 7.42(h) and (j); and
- (2) Duplication fees otherwise chargeable under § 7.42(i).

§ 7.44 How can I pay a processing fee for records requested under subpart B or subpart C?

(a) Fees should be paid online, using a credit card, debit card, or electronic check. The DOT FOIA page (<http://www.dot.gov/foia>) has direct links to the electronic payment site. Any fees paid with a paper check, draft, or money order must be made payable to the U.S. Treasury and delivered as directed by the applicable FOIA Requester Service Center identified in § 7.27 (if the fees are for records made available under subpart C) or the DOT Dockets Office identified in § 7.12(b)(1) (if the fees are for records made available under subpart B).

§ 7.45 When are pre-payments required for records requested under subpart C, and how are they handled?

(a) When DOT estimates that the search charges, review charges, duplication fees, or any combination of fees that could be charged to the requester will likely exceed US \$25, DOT notifies the requester of the estimated amount of the fees, unless the requester has previously indicated a willingness to pay fees as high as those anticipated. In cases where DOT notifies the requester that actual or estimated fees may amount to more than US \$25, the time limit for responding to the request is tolled until the requester has agreed to pay the anticipated total fee (see § 7.35). The notice also informs the

requester how to consult with the appropriate DOT officials with the object of reformulating the request to meet his or her needs at a lower cost.

(b) DOT may require payment of fees prior to actual duplication or delivery of any releasable records to a requester. However, advance payment, i.e., before work is commenced or continued on a request, is not required unless:

(1) Allowable charges that a requester may be required to pay are likely to exceed US \$250; or

(2) The requester has failed to pay within 30 days of the billing date fees charged for a previous request to any part of the U.S. Government.

(c) When paragraph (b)(1) of this section applies, DOT notifies the requester of the estimated cost. If the requester has a history of prompt payment of FOIA fees, the requester must furnish satisfactory assurance of full payment of the estimated charges. Otherwise, the requester may be required to make advance payment of any amount up to the full estimated charges.

(d) When paragraph (b)(2) of this section applies, DOT requires the requester to either demonstrate that the fee has been paid or pay the full amount owed, including any applicable interest, late handling charges, and penalty charges as discussed in § 7.46. DOT also requires such a requester to make an advance payment of the full amount of the estimated fee before DOT begins processing a new request or continues processing a pending request.

(e) In the event that a DOT component is required to refund a prepayment, the processing of the refund may necessitate collection of the requester's Taxpayer Identification Number or Social Security Number and direct deposit information (bank routing number and bank account number) under 31 U.S.C. 3325, 31 U.S.C. 3332, and 31 CFR Part 208.

§ 7.46 How are late payments handled?

(a) DOT assesses interest on an unpaid bill starting on the 31st day following the day on which the notice of the amount due is first mailed to the requester. Interest accrues from the date of the notice of amount due at the rate prescribed in 31 U.S.C. 3717. Receipt by DOT of a payment for the full amount of the fees owed within 30 calendar days after the date of the initial billing stops the accrual of interest, even if the payment has not been processed.

(b) If DOT does not receive payment of the fees charged within 30 calendar days after the date the initial notice of the amount due is first mailed to the requester, DOT assesses an administrative charge to cover the cost

of processing and handling the delinquent claim. In addition, DOT applies a penalty charge with respect to any principal amount of a debt that is more than 90 days past due. Where appropriate, DOT uses other steps permitted by Federal debt collection statutes, including disclosure to consumer reporting agencies and use of collection agencies, to encourage payment of amounts overdue.

Issued in Washington, DC, on December 20, 2010.

Ray LaHood,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

RIN 0648-XA016

2011 Annual Determination for Sea Turtle Observer Requirement

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

ACTION: Notification of annual determination.

SUMMARY: The National Marine Fisheries Service (NMFS) is providing notification that the agency will not identify additional fisheries to observe on the Annual Determination (AD) for 2011, pursuant to its authority under the Endangered Species Act (ESA). Through an AD, NMFS identifies fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate existing measures to prevent or reduce prohibited sea turtle takes, and to determine whether additional measures to implement the prohibition against sea turtle takes may be necessary. Fisheries identified in the 2010 AD (see Table 1) remain on the AD and are therefore required to carry observers upon NMFS' request, until 2014.

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

FOR FURTHER INFORMATION CONTACT: Kristy Long, Office of Protected Resources, 301-713-2322; Ellen Keane, Northeast Region, 978-282-8476;

Dennis Klemm, Southeast Region, 727–824–5312; Elizabeth Petras, Southwest Region, 562–980–3238; Kim Maison, Pacific Islands Region, 808–944–2257. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the Sea Turtle Observer Requirement for Fisheries (72 FR 43176, August 3, 2007) may be obtained at <http://www.nmfs.noaa.gov/pr/species/turtles/regulations.htm> or from any NMFS Regional Office at the addresses listed below:

NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2298;

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

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

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

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.*, NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp’s ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding

colony populations of green turtles in Florida and on the Pacific coast of Mexico and breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of green and olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is one of the main sources of sea turtle injury and mortality nationwide. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Sections 9 and 11 of the ESA authorize the issuance of regulations to enforce the take prohibitions. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine that the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception primarily because we lack information about fishery-sea turtle interactions.

The most effective way for NMFS to learn more about sea turtle-fishery interactions in order to prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) to

establish procedures through which each year NMFS will identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176, August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, either recreational or commercial, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the U.S. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

NMFS and/or interested cooperating entities will pay the direct costs for vessels to carry observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be eligible to be observed for five years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; to evaluate whether existing measures are minimizing or preventing takes; and to determine whether additional measures are needed to implement ESA take prohibitions and conserve turtles.

2011 Annual Determination

NMFS is providing notification that the agency will not identify additional fisheries to observe for the 2011 AD, pursuant to its authority under the ESA. NMFS is not identifying additional fisheries at this time given lack of resources to implement new or expand existing observer programs to focus on sea turtles (50 CFR 222.402(a)(4)). Fisheries identified in the 2010 AD (*see* Table 1) remain on the AD and are therefore required to carry observers, upon NMFS’ request, until 2014.

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

Fishery	Years eligible to carry observers
Trawl Fisheries	
Atlantic shellfish bottom trawl	2010–2014
Mid-Atlantic bottom trawl	2010–2014
Mid-Atlantic mid-water trawl (including pair trawl)	2010–2014
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2010–2014
Gillnet Fisheries	
CA halibut, white seabass and other species set gillnet (>3.5 in. mesh)	2010–2014
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 in. and <14 in.)	2010–2014
Chesapeake Bay inshore gillnet	2010–2014
Long Island inshore gillnet	2010–2014

TABLE 1—STATE AND FEDERAL COMMERCIAL FISHERIES INCLUDED ON THE ANNUAL DETERMINATION—Continued

Fishery	Years eligible to carry observers
Mid-Atlantic gillnet	2010–2014
North Carolina inshore gillnet	2010–2014
Northeast sink gillnet	2010–2014
Southeast Atlantic gillnet	2010–2014
Trap/Pot Fisheries	
Atlantic blue crab trap/pot	2010–2014
Atlantic mixed species trap/pot	2010–2014
Northeast/mid-Atlantic American lobster trap/pot	2010–2014
Pound Net/Weir/Seine Fisheries	
Mid-Atlantic haul/beach seine	2010–2014
Mid-Atlantic menhaden purse seine	2010–2014
U.S. mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net)	2010–2014
Virginia pound net	2010–2014

Dated: December 17, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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