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Ruth Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

[FR Doc. 2021-08193 Filed 4-19-21; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 223**

[Docket No. 210414-0079]

RIN 0648-BK49

Potential New Turtle Exclusion Device Requirements for Skimmer Trawl Vessels Less Than 40 Feet (12.2 Meters) in Length

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS hereby publishes an advance notice of proposed rulemaking to solicit comments on the possibility of modifying the turtle excluder device (TED) related requirements for skimmer trawl vessels less than 40 feet (12.2 meters) in length operating in the southeast U.S. shrimp fisheries. NMFS is requesting comments on this possible action.

DATES: Information related to this document must be received by close of business on May 20, 2021.

ADDRESSES: You may submit comments via the Federal e-rulemaking Portal at www.regulations.gov identified by docket number 210414-0079, or by mail to Michael Barnette, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or other sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-551-5794, michael.barnette@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

Under the Endangered Species Act (ESA) and its implementing regulations, taking (e.g., harassing, injuring or killing) sea turtles is prohibited, except as identified in 50 CFR 223.206, in compliance with the terms and conditions of a biological opinion issued under section 7 of the ESA, or in accordance with an incidental take permit issued under section 10 of the ESA. Incidental takes of threatened and endangered sea turtles during shrimp trawling are exempt from the taking prohibition of section 9 of the ESA so long as the conservation measures specified in the sea turtle conservation regulations (50 CFR 223.206; 50 CFR 224.104) are followed.

On December 16, 2016 (81 FR 91097), NMFS published a proposed rule that would withdraw the tow time

restriction and require TEDs designed to exclude small sea turtles in all skimmer trawls, pusher-head trawls, and wing nets (butterfly trawls) rigged for fishing, with the exception of vessels participating in the Biscayne Bay wing net fishery prosecuted in Miami-Dade County, Florida. NMFS ultimately published a final rule on December 20, 2019 (84 FR 70048), requiring skimmer trawl vessels 40 feet (12.2 meters) and greater in length to use TEDs designed to exclude small sea turtles in their nets effective on April 1, 2021. On March 31, 2021 (86 FR 16676), NMFS delayed the effective date of this final rule until August 1, 2021, due to safety and travel restrictions related to the COVID-19 pandemic that prevented necessary training and outreach for fishers. The changes between the proposed and final rules were due to potential economic impacts of the proposed rule, performance and safety issues with TED use on smaller vessels, and lack of testing data with gear types other than skimmer trawls. Analyses for all considered alternatives were included in a final environmental impact statement (FEIS), the notice of availability of which was published on November 15, 2019 (EIS No. 20190270; 84 FR 62530; 11/15/2019).

NMFS has conducted additional testing that has produced TED designs that are effective on skimmer trawl vessels less than 40 feet (12.2 meters) in length. Therefore, NMFS is soliciting public comment on the potential expansion of TED requirements for skimmer trawl vessels less than 40 feet (12.2 meters) in length. NMFS is seeking input from the public on the feasibility of employing these TEDs on smaller length vessels, input on the associated costs of any new TED requirements, and other potential environmental impacts.

Request for Comments

NMFS requests comments on potential impacts from a potential expansion of TED requirements to other skimmer trawl vessels, as well as other initiatives to reduce fishery bycatch of threatened and endangered sea turtles in the southeast U.S. shrimp fisheries.

Authority: 16 U.S.C. 1531-1543.

Dated: April 15, 2021.

Samuel D. Rauch, III,

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

[FR Doc. 2021-08108 Filed 4-19-21; 8:45 am]

BILLING CODE 3510-22-P