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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223

[Docket No. 200812-0216]

RIN 0648-BJ99

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Final rule; correction.

SUMMARY: NMFS is correcting a final rule that appeared in the **Federal Register** on December 20, 2019, that requires all skimmer trawl vessels 40 feet and greater in length to use turtle excluder devices (TEDs) designed to exclude small sea turtles in their nets. There is an error in the description of the small turtle TED flap. This correction is necessary to prevent sea turtle bycatch and mortality.

DATES: Effective April 1, 2021.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-551-5794,

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SUPPLEMENTARY INFORMATION:

Need for Correction

NMFS published a final rule requiring all skimmer trawl vessels 40 feet and greater in length to use TEDs designed to exclude small turtles in their nets on December 20, 2019 (84 FR 70048). The final rule becomes effective on April 1, 2021. While the

specifications of the small turtle TED escape opening flap were intended to apply to all TEDs based on NMFS TED testing results, an error in the description on page 70064 inadvertently limited the specifications to only the bent bar TEDs. As a result, other TEDs, such as the straight bar TED, could be fished with an escape opening flap that would impair the effective release of small sea turtles from the net. NMFS is correcting the error through this action.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such requirement is unnecessary and contrary to the public interest. While the skimmer TED requirements will not become effective until April 1, 2021, the lengthy delay in effectiveness was provided explicitly to allow sufficient time for construction of the many new small turtle TEDs that will be required once the rule takes effect. Given the time that has passed since publication of the final rule, NMFS expects that some new TED construction has already commenced, and that the rate of TED construction will increase in the coming months. The TED configurations that will be allowable under the erroneous text are known to be widely used by otter trawl vessels, which are already required to employ TEDs. Consequently, NMFS expects that the same configurations with the narrow grid spacing would be popular among skimmer vessels, if the configurations are identified in the regulations as approved TED configurations. Further delay in correcting the error in the regulatory text will allow for the continued construction of TED configurations that do not achieve the necessary conservation benefit, and which will no longer be allowable configurations after the error

has been corrected. That delay would be expected to result in considerable needless expense by industry in constructing TEDs consistent with the erroneous text, and that needless expense is contrary to the public interest. This correcting action is consistent with NMFS' testing of various TED designs for turtle exclusion and other findings in the administrative record. The Draft and Final Environmental Impact Statements prepared for the rule discuss the different TED configurations, their expected conservation benefit, and the catch losses associated with their use, and these issues are addressed more generally in the preamble for the proposed rule and final rule. Consequently, the public has already been provided prior notice and opportunity to comment generally on this aspect of the rule, rendering further opportunity to comment unnecessary. Therefore, in order to avoid the negative consequences that are expected to result from unnecessary delay in making this correction, the AA finds good cause to waive the requirement to provide prior notice and opportunity for public comment.

CORRECTION

In FR Doc. 19-27398, appearing on page 70048, the following correction is made:

§ 223.207 [Corrected]

1. On page 70064, in the first column, correct paragraph (d)(3)(v) to read as follows:

(v) *Small turtle TED flap*. If the angle of the deflector bars of a TED used by a skimmer trawl exceeds 45°, or if a double cover opening straight bar TED (at any

allowable angle) is used by a skimmer trawl, the flap must consist of twine size not greater than number 15 (1.32-mm thick) on webbing flaps described in paragraphs (d)(3)(i), (d)(3)(ii), (d)(3)(iii), or (d)(3)(iv) of this section.

Dated: April 13, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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