

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 180

#### Office of the Secretary

#### 49 CFR Part 80

### Federal Railroad Administration

#### 49 CFR Part 261

### Federal Transit Administration

#### 49 CFR Part 640

### Maritime Administration

#### 49 CFR Part 1700

[Docket No. DOT-OST-2009-0004]

RIN 2105-AD70

### Credit Assistance for Surface Transportation Projects

**AGENCIES:** Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

**ACTION:** Withdrawal of notice of proposed rulemaking (NPRM) and request for comments.

**SUMMARY:** This notice withdraws DOT's proposed changes to its regulations implementing the Transportation Infrastructure Finance and Innovation Act (TIFIA). The NPRM is being withdrawn in order to allow the Obama Administration to review the program and decide what, if any changes, it may wish to propose.

**DATES:** February 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Sullivan, TIFIA Joint Program Office (202) 366-5785, or Mr. Steven Rochlis, Office of the Chief Counsel (202) 366-1395, Federal Highway

Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** On Wednesday, January 21, 2009, DOT published a NPRM (74 FR 3487) concerning the Transportation Infrastructure Finance and Innovation Act (TIFIA) to implement recent statutory changes and to incorporate certain other changes to the rule. In addition, the NPRM sought comment on policy issues with potentially significant impact on the TIFIA project selection process. This withdrawal will allow the Obama Administration to review the program and decide what, if any changes, it may wish to propose. We believe that the public will benefit from withdrawal of the proposal early in the comment period before comments have been drafted and filed pending review of the program by the new administration.

Issued in Washington, DC on February 16, 2009.

**Ray LaHood,**  
*Secretary of Transportation.*

[FR Doc. E9-3975 Filed 2-24-09; 8:45 am]

BILLING CODE 4910-9X-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

RIN 0648-XN22

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Bottom Longline Petition

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

**ACTION:** Announcement of receipt of petitions for rulemaking; request for comments.

**SUMMARY:** NMFS announces the receipt of two petitions for rulemaking from several non-governmental organizations (NGOs). These petitions request NMFS take specific actions to address sea turtle interactions in the bottom longline component of the commercial reef fish fishery.

**DATES:** Comments will be accepted through March 27, 2009.

**ADDRESSES:** You may submit comments on the proposed rule, identified by "0648-XN22" by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Fax: 727-824-5308; Attention: Peter Hood.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2009-0031" in the keyword search, then select "Send a Comment or Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the petitions may be obtained from Peter Hood at the address specified above.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, telephone 727-824-5305, fax 727-824-5308, e-mail [Peter.Hood@noaa.gov](mailto:Peter.Hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Oceana has petitioned the Gulf of Mexico Fishery Management Council (Council) and NMFS to implement emergency regulations for the bottom longline component of the Gulf of Mexico (Gulf) reef fish fishery to mitigate the high levels of loggerhead sea turtle bycatch in the fishery and to implement appropriate long-term actions, through an amendment to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP), to ensure adequate protection for the loggerhead sea turtle populations. The Oceana petition specifically requests NMFS prohibit the use of reef fish bottom longline gear in waters shallower than 55 fathoms (100m) in the

Gulf of Mexico to protect loggerhead sea turtles within the depths where all observed takes have occurred, and that NMFS prohibit the use of squid as bait when fishing with reef fish bottom longlines in waters deeper than 55 fathoms (100m) to further reduce the possibility of takes.

Another petition from the Center for Biological Diversity, Defenders of Wildlife, Earthjustice, Caribbean Conservation Corporation, Gulf Restoration Network, and Turtle Island Restoration Network alleges NMFS has violated the Endangered Species Act (ESA) by allowing the bottom longline component of the reef fish fishery to continue to operate given evidence it has exceeded its take based on the incidental take statement (ITS) from a 2005 biological opinion (opinion). This petition requests that NMFS close the bottom longline component of the Gulf reef fish fishery immediately until NMFS has put in place sufficient measures to protect loggerhead sea turtles consistent with the guidelines of the ESA.

According to the petitions filed by the NGOs, the reasons sea turtle bycatch by reef fish bottom longlines requires emergency action are:

(1) A NMFS report released in 2008 suggests loggerhead sea turtle take has exceeded that allowed by the ITS from a 2005 opinion. The opinion concluded

continued authorization of the Gulf of Mexico reef fish fishery managed under the FMP was not likely to jeopardize the continued existence of sea turtles and smalltooth sawfish. An ITS was issued in the opinion specifying anticipated sea turtle and smalltooth sawfish take on a 3-year basis. For loggerhead sea turtles, the anticipated 3-year incidental take for the Gulf reef fish bottom longline fishery was 85 takes, of which 42 would be lethal. The 2008 NMFS report using observer data estimated the level of take during an 18-month period was between 411–1,983 hard-shell sea turtles, primarily comprised of loggerheads.

(2) Information from the Florida Fish and Wildlife Conservation Commission shows declining trends in the number of nesting loggerhead sea turtles on Florida beaches. Loggerhead nesting at Florida index nesting beaches has declined 40 percent between 1989 and 2008. These declines have been interpreted as a possible decline in the sub-adult and adult population.

(3) By not taking action, NMFS is in violation of the Endangered Species Act (ESA). Specifically, the petitioners allege NMFS cannot ensure against jeopardy by continuing to authorize Gulf reef fish bottom longline fishing without having assessed the impacts of excessive take by the fishery in violation of ESA section 7(a)(2). They also allege

that by allowing the fishery to continue, NMFS is allowing loggerhead sea turtle take to continue in violation of ESA sections 7(d) and 9.

Comments received will be considered by NMFS in determining whether to proceed with the development of regulations suggested by the petitions. Upon determining whether to open the rulemaking suggested by the petition, the Assistant Administrator Fisheries, NOAA, will publish a notice of the agency's decision or action in the **Federal Register**.

Additionally, the Council has requested that NMFS implement emergency regulations to address the sea turtle bycatch in the bottom longline component of the commercial reef fish fishery. Specifically, they requested that fishing with bottom longlines for reef fish be prohibited inside of 50 fathoms (91.4 m) in the eastern Gulf of Mexico. NMFS is considering the Council's request that it implement these restrictions independently from its consideration of the NGO's petition for rulemaking.

Dated: February 19, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For  
Regulatory Programs, National Marine  
Fisheries Service.*

[FR Doc. E9-4021 Filed 2-24-09; 8:45 am]

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