(Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of the establishment of this restricted area would have no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic, and accordingly, certifies that this proposal, if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

The Mobile District has prepared a preliminary Environmental Assessment (EA) for this action. The preliminary EA concluded that this action will not have a significant impact on the human environment. After receipt and analysis of comments from this **Federal Register** posting and the Mobile District's concurrent Public Notice, the Corps will prepare a final environmental document detailing the scale of impacts this action will have upon the human environment. The EA will be available for review at the Mobile District Office, Regulatory Branch, 109 St. Joseph St., Mobile, Alabama.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded mandates Act. We have also found under section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, we propose to amend 33 CFR part 334 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.783 is added to read as follows:

§ 334.783 Arlington Channel, U.S. Coast Guard Base, Mobile, Alabama, restricted area.

(a) *The area.* The waters of Arlington Channel west of a line from latitude 30° – 39′ – 09″ N, longitude 088° – 03′– 24″ W to latitude 30° – 38′ – 54″ N., longitude 088° – 03′ – 17″ W.

(b) *The regulation.* The restricted area is open to U.S. Government vessels and transiting vessels only. U.S. Government vessels include U.S. Coast Guard vessels, Department of Defense vessels, State and local law enforcement and emergency services vessels and vessels under contract with the U.S. Government. Vessels transiting the restricted area shall proceed across the area by the most direct route and without unnecessary delay. Fishing, trawling, net-fishing and other aquatic activities are prohibited in the restricted area without prior approval from the Commanding Officer, U.S. Coast Guard Group Mobile or his designated representative.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, U.S. Coast Guard Group Mobile or his designated representative.

Dated: March 11, 2004.

Michael B. White,

Chief, Operations , Directorate of Civil Works.

[FR Doc. 04–8603 Filed 4–15–04; 8:45 am]

BILLING CODE 3710–92–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–914; MM Docket No. 01–153, RM–10169]

Radio Broadcasting Services; Tilden, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 66 FR 38410 (July 24, 2001), this *Report and Order* dismisses the Petition for Rule Making in MM Docket No. 01–153, proposing to allot Channel 245C3 at Tilden, Texas. The proposal was dismissed because it is inconsistent with, and untimely filed in relation to, a previously-filed proposal in MM Docket No. 00–148.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–153, adopted April 2, 2004 and released April 5, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–8685 Filed 4–15–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 040412112–4112–01; I.D. 040104C]

RIN 0648–AS02

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

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

ACTION: Proposed rule.

SUMMARY: NMFS is proposing to amend the turtle excluder device (TED) regulations that require most shrimp trawlers to use TEDs in the southeastern Atlantic and the Gulf of Mexico to reduce the incidental capture of endangered and threatened sea turtles during shrimp trawling. Specifically, NMFS proposes to allow the use of a double cover flap TED with a modified flap design. This modification would allow the use of a flap that extends up to 24 inches (61 cm) past the posterior edge of the TED frame. This modification has been tested and meets the regulatory requirements for efficiency at releasing sea turtles.

DATES: Written comments (see **ADDRESSES**) will be accepted through May 3, 2004.

ADDRESSES: You may submit comments, identified by the docket number 040412112–4112–01 and/or the Regulatory Information Number (RIN) 0648–AS02, by any of the following

methods: (1) E-mail: 0648–AS02.proposed@noaa.gov. Include docket number 040412112–4112–01 and/or RIN number 0648–AS02 in the subject line of the message; (2) Federal eRulemaking Portal: *http://www.regulations.gov*.

Follow the instructions for submitting comments; (3) Fax: 727–570–5517, Attention Mr. Robert Hoffman; (4) Mail: Comments on paper, disk, or CD-ROM should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS Southeast Regional Office, 9721 Executive Center Drive North, Suite 102, St. Petersburg, FL 33702.

All submissions received must include the agency name and docket number for this proposed rule. For access to the background documents or comments received, see contact information below.

FOR FURTHER INFORMATION CONTACT: Robert Hoffman (ph. 727–570–5312, fax 727–570–5517, e-mail *Robert.Hoffman@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken and killed as a result of numerous activities, including fishery trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in § 223.206, or if in accordance with the terms and conditions of a biological opinion issued under section 7 of the ESA or an incidental take permit issued under section 10 of the ESA. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR part 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic area, Gulf area, and summer flounder sea turtle protection area, see § 223.206 to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED the Parker soft TED (see § 223.207).

TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (§ 223.207(e)(1)). Most approved hard TEDs are described in the regulations (§ 223.207(a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

February 21, 2003, Amendments to the Sea Turtle Conservation Regulations

On February 21, 2003, NMFS issued a final rule (68 FR 8456), amending the sea turtle conservation regulations to protect large loggerhead, green, and leatherback sea turtles. The February 2003 final rule requires that all shrimp trawlers fishing in the offshore waters of the southeastern United States (Atlantic area and Gulf area) and the inshore waters of Georgia and South Carolina use either a double cover flap TED, a single-grid hard TED with a 71–inch (180–cm) opening, or a Parker soft TED with a 96–inch (244–cm) opening in each net rigged for fishing. In inshore waters, except those of Georgia and South Carolina, the rule allows the use of a single-grid hard TED with a 44–inch (112–cm) opening, a Parker soft TED with a 56–inch (142–cm) opening, and a hooped hard TED with a 35–inch (89–cm) by 27–inch (69–cm) escape opening.

Since publication of the final rule, fishermen have reported that the current double cover flap TED design stretches over time. This stretching causes a gap between the flap panels and the grid frame which causes shrimp loss.

Since September 2003, and in accordance with § 223.207(e)(2), NMFS has issued 208 experimental permits to fishermen to test a modified double cover flap TED with longer flap panels. This modification to the double cover flap TED was designed by NMFS gear technicians in cooperation with industry. The modification incorporates the use of flap panels that extend 24 inches (61 cm) past the posterior edge of the TED frame and are sewn down the entire length of the outside edge of each flap panel. The current double cover flap TED design only allows the flap panels to extend 6 inches (15 cm) past the posterior edge of the TED frame. Interviews with permitted fishermen have indicated that the new design works well.

Long Flap Paneled Double Cover Flap TED Testing

NMFS tested the modified double cover flap TED using testing protocols designed to evaluate a TED's ability to release large turtles. The protocols were developed during the testing and approval of the double cover flap TED (66 FR 24287, May 14, 2001). NMFS used the average carapace measurements of 15 nesting female leatherback turtles to construct a pipe-framed model of a leatherback turtle. This model measured 40 inches wide by 21 inches (102 cm by 53 cm) deep. The test was performed by a diver swimming repeatedly through the trawl with the model and pushing it through the TED opening. During these tests, the diver was able to push the model through the opening with ease. When the model was inverted (simulating the dorsal surface of the turtle oriented against the TED frame), the diver was still able to push the model through the opening with ease.

The long flap double cover flap TED was also tested for its ability to release wild turtles of a range of sizes using a modified version of the Cape Canaveral testing protocol published in the **Federal Register** on October 9, 1990, (55 FR 41092). The 1990 protocol called for the use of a series of double rigged tows, in an area with a high sea turtle concentration (such as the Cape Canaveral Shipping Channel), in which one trawl is a naked net (no TED) and the other includes the experimental TED. The catch of turtles in the naked net is compared to the captures in the net with the TED installed to determine if the TED was at least 97 percent effective at releasing turtles as required by § 223.207(e)(1). NMFS has modified this protocol to better protect turtles and to increase its accuracy. The modifications include the use of two trawls, each rigged with the experimental TED and a video camera mounted by the TED escape opening that can be monitored on board the research vessel. Once the NMFS technician on board the research vessel sees a turtle encounter the TED, the turtle is given 10 minutes to escape. If the turtle does not escape within 10 minutes, the trawl is retrieved and the turtle is released. Any turtle that does

not escape within 10 minutes is considered to have been captured.

Using this modified Cape Canaveral protocol, NMFS tested the modified double cover flap TED off the coast of Georgia between November 13 and November 18, 2003, and in the Cape Canaveral Channel between February 19 through March 12, 2004. In total, 33 turtles were exposed to this TED with 32 of the turtles escaping within the 10–minute exposure period for a 97 percent success rate. The turtles exposed to the modified double cover flap TED included one leatherback, seven Kemp's ridleys, and 25 loggerheads. The single turtle that did not escape within the 10 minute limit was a juvenile loggerhead.

Provisions of the Proposed Rule

The proposed rule would allow the use of a double cover flap TED with flap panels that extend between 6 inches (15 cm) but no more than 24 inches (61 cm) past the posterior edge of the grid with the use of edge lines in all areas and at all times where and when TEDs are required. The proposed rule would only modify the existing requirements for the double cover flap TED in a permissive manner, i.e. fishermen may now use longer flaps and edge lines on double cover flap TEDs, and they are not required to change existing gear.

Specifically, the proposed rule would allow a single-grid hard TED with the escape opening cut of at least 56 inches (142 cm) wide and 20 inches (51 cm) forward and aft, covered with a split flap composed of two equal size rectangular panels. Each panel must be no less than 58 inches (147 cm) wide and may overlap each other no more than 15 inches (38 cm). The panels may only be sewn together along the leading edge of the cut. The edge of the panels may extend no more than 24 inches (61 cm) past the posterior edge of grid, and may be sewn down the entire length of the outside edge of each flap panel. To better preserve the shape of the webbing panels over time, edge lines can be used around the edges of the unattached portion of the flap panels to help maintain the shape of the flap. Edge lines can only be used if the flap panels are sewn down the entire length of the outside edge of each flap panel.

Classification

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

NMFS prepared a draft environmental assessment/intitial regulatory impact review/Regulatory Flexibility Act analysis (EA/RIR/IRFA) for this proposed rule that evaluates the potential impact on the environment that may result from the proposed rule. The EA/IRFA/RIR found that the implementation of this proposed rule will not have a significant impact on the quality of the human environment and that the preparation of an environmental impact statement is not necessary.

It is estimated that 11,244 small vessels (vessels less than or equal to 60 ft (18.3 m)) and 2,368 large vessels (vessels greater than 60 ft (18.3 m)), or a total of 13,572 vessels, operate in the Southeast shrimp fishery. Among these vessels, approximately 2,600 vessels are currently permitted to operate in the Gulf of Mexico EEZ commercial shrimp trawl fishery. Small vessels in the Southeast shrimp trawl fishery are estimated to harvest an average of 4,752 lb (2,155 kg) of shrimp valued at $12,435 in gross revenues, requiring average variable cost expenditures of $8,708 and generating a profit of $3,727. Large vessels in the Southeast shrimp trawl fishery are estimated to harvest an average of 42,656 pounds of shrimp valued at $142,880 in gross revenues, requiring average variable cost expenditures of $126,089 and generating a profit of $16,089. All participants in the trawl fishery would be affected by the proposed action in that each would have the opportunity to utilize proposed gear modification. However, the preferred alternative would not impose a requirement to use the proposed longer flaps, nor would the use of double-cover TEDs rather than other certified TED designs be required. The proposed rule, therefore, would create options and not obligations. Use of the proposed modified TED will require no special skills other than those currently necessary to operate in the fishery. No duplicative, overlapping, or conflicting Federal rules have been identified. All business entities participating in the commercial shrimp fisheries are considered small entities, so the issue of disproportionality does not arise. The proposed rule will not impose any additional fishing restrictions on participants in the fishery. The proposed rule would simply allow greater flexibility to select the gear configuration that best suits the operational conditions of the individual shrimping operation. Thus, current operational behaviors, including when to shrimp, where to shrimp, and how long to shrimp, as well as where product is marketed, can continue unchanged. Minor costs associated with additional netting necessary to extend the flaps may be incurred. However, these costs should not impact profitability and, in fact, would only be incurred should the operator determine that the current flap dimensions result in excessive shrimp loss, such that modification would result in a net financial gain. Thus, no reduction in profits are expected for any small entities.

The proposed rule is not expected to result in any direct adverse economic impacts on small entities. The issue of significant alternatives is, therefore, not relevant. However, two alternatives were considered but not analyzed for their economic impact. The first was to allow the longer flap, but at a maximum length of something less than 24 inches (60.96 cm). The second was to allow the longer flap with a maximum length of 24 inches (60.96 cm) but only allow it to be sewn down each side by six inches. Tests of the long flap double cover flap TED, with a 24–inch (60.96–cm) flap sewn all the way down both sides (the flap configuration of the preferred alternative), have shown that this flap configuration is at least 97 percent effective at releasing sea turtles; therefore, to approve either of these more restrictive alternatives would arbitrarily limit a fisherman's ability to modify his gear. Therefore the only alternatives considered for further analysis were the preferred action and the no action alternative. The no action alternative would maintain current flap specifications, thereby continuing reported, but unsubstantiated and unquantified, shrimp loss that results from stretching of the flaps. This alternative, therefore, would not eliminate the unanticipated shrimp loss associated with current specifications, nor provide gear flexibility as per the NMFS' intent.

A copy of the EA/RIR/IRFA is available from NMFS (see **ADDRESSES**).

The Endangered Species Act provides the statutory basis for this proposed rule.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: April 12, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

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 *et seq.*

2. In § 223.207, paragraphs (d)(3)(iii) is revised to read as follows:

§ 223.207 Approved TEDs.

* * * * *

(d) * * *

(3) * * *

(iii) *Double cover flap offshore TED flap.* This flap must be composed of two equal size rectangular panels of webbing. Each panel must be no less than 58 inches (147 cm) wide and may overlap each other no more than 15 inches (38 cm). The panels may only be sewn together along the leading edge of the cut. The trailing edge of each panel must not extend more than 24 inches (61 cm) past the posterior edge of the grid (Figure 16 to this part). Each panel may be sewn down the entire length of the outside edge of each panel. Chafing webbing described in paragraph (d)(4) of this section may not be used with this type of flap.

(A) *Edge lines.* Optional edge lines can be used in conjunction with this flap. The line must be made of polyethylene with a maximum diameter of 3/8 inches (.95 cm). A single length of line must be used for each flap panel. The line must be sewn evenly to the unattached, inside edges and trailing edges, of each flap panel. When edge lines are installed, the outside edge of each flap panel must be attached along the entire length of the flap panel.

(B) [Reserved]

3. In part 223, Figure 16 is revised to read as follows:

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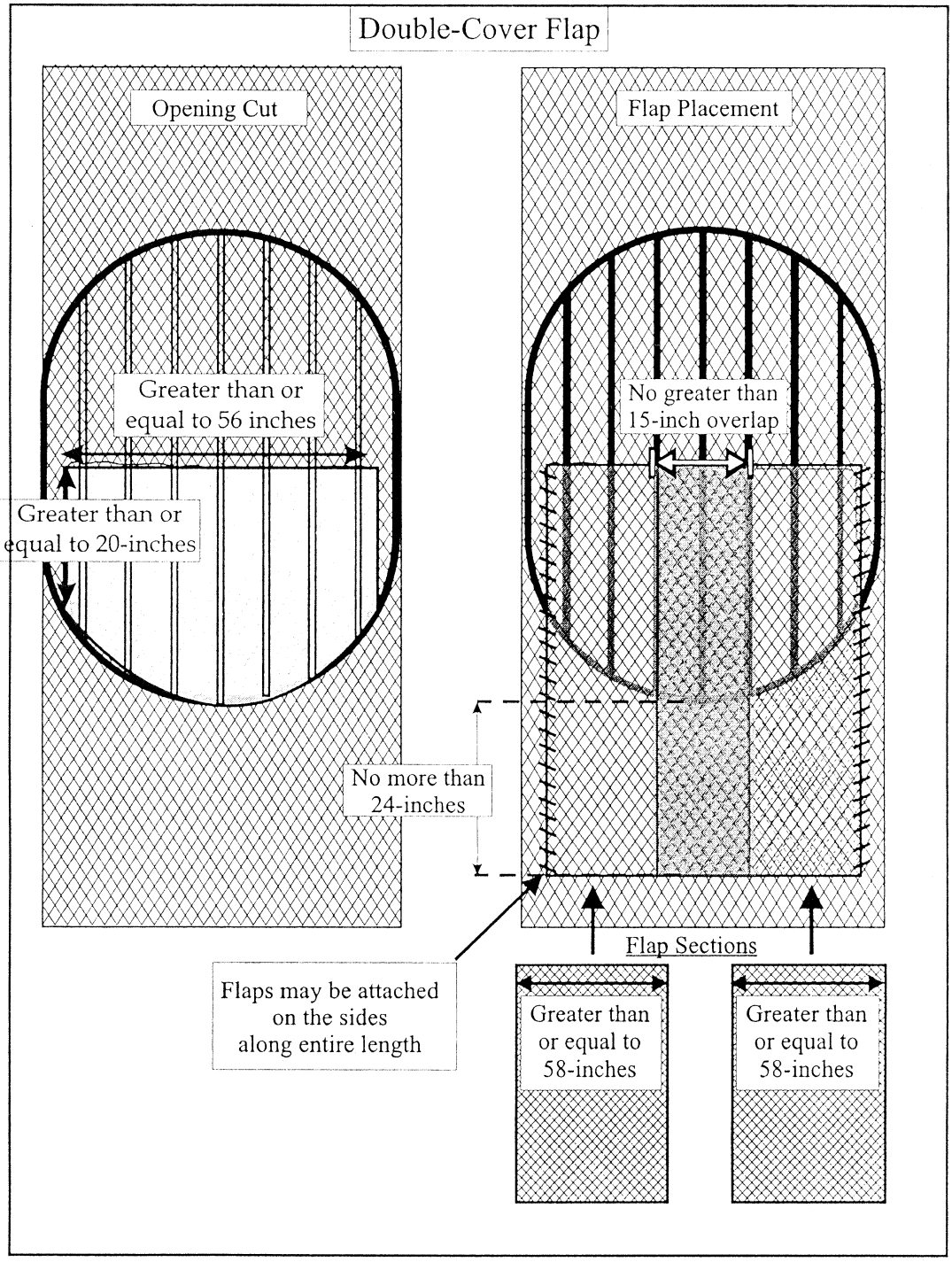
FIGURE 16 TO PART 223-ESCAPE OPENING AND FLAP DIMENSIONS FOR THE DOUBLE COVER FLAP TED



[FR Doc. 04–8698 Filed 4–15–04; 8:45 am]
BILLING CODE 3510–22–C