

## Classification

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

NMFS prepared an environmental assessment (EA) for this final rule that evaluates the potential impact on the environment that may result from the final rule. The EA found that the implementation of this final 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. A copy of the EA is available from NMFS (see ADDRESSES).

Under the existing TED regulations published on February 21, 2003, offshore fishermen can choose to use a single grid hard TED with either a 71-inch (180-cm) opening or a double cover flap, or they can use a Parker soft TED with a leatherback opening. Until this final rule becomes effective, hooped hard TED use would not be legal in offshore waters. Accordingly, if the effectiveness of this rule is delayed, it would burden fishermen who currently use hooped hard TEDs in offshore waters and plan to continue using them by forcing them either to abstain from fishing until the rule becomes effective, or else purchase an additional TED of one of the varieties described above. If the rule becomes effective immediately, then there will be no need for such substantial duplicative expenditures in order to fish during that period. Therefore, because this rule relieves a restriction, the Assistant Administrator for Fisheries, NOAA, finds good cause under the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1) to waive the 30 day delay in effectiveness for this final rule.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This final rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the provisions of the final rule would not require any action or purchase on the part of fishermen, but rather would allow fishermen the option of a hooped hard TED design to comply with the TED requirement. Hooped hard TEDs are already in use by some fishermen who prefer this TED style due to its efficiency in releasing both turtles and fish bycatch, while retaining

shrimp. Therefore, a regulatory flexibility analysis was not prepared.

## List of Subjects in 50 CFR Part 223

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

Dated: August 21, 2003.

**Rebecca Lent,**

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

■ For the reasons set out in the preamble, 50 CFR part 223 will 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 (a) introductory text, (a)(1), (a)(7)(i), and (a)(8)(i) are revised and paragraphs (d)(6) and (d)(7) are added to read as follows:

### § 223.207 Approved TEDs.

(a) *Hard TEDs.* Hard TEDs are TEDs with rigid deflector grids and are categorized as “hooped hard TEDs” and “single-grid hard TEDs” such as the Matagorda and Georgia TED (Figures 3 & 4 to this part). Hard TEDs complying with the following generic design criteria are approved TEDs:

(1) *Construction materials*—(i) *Single-grid and inshore hooped hard TED.* A single-grid hard TED or an inshore hooped hard TED must be constructed of one or a combination of the following materials, with minimum dimensions as follows:

(A) Solid steel rod with a minimum outside diameter of 1/4 inch (0.64 cm);

(B) Fiberglass or aluminum rod with a minimum outside diameter of 1/2 inch (1.27 cm); or

(C) Steel or aluminum tubing with a minimum outside diameter of 1/2 inch (1.27 cm) and a minimum wall thickness of 1/8 inch (0.32 cm) (also known as schedule 40 tubing).

(ii) *Offshore hooped hard TED.* An offshore hooped hard TED must be constructed of aluminum, with minimum dimensions as follows:

(A) Solid rod with a minimum outside diameter of 5/8 inch (1.59 cm); or

(B) Tubing with a minimum outside diameter of 1 inch (2.54 cm) and a minimum wall thickness of 1/8 inch (0.32 cm).

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(7) \* \* \*

(i) *Hooped hard TEDs.* \* \* \*

(A) *Escape opening for inshore hooped hard TED.* The inshore hooped

hard TED escape opening must have a horizontal measurement of no less than 35 inches (89 cm) wide and a forward measurement of no less than 27 inches (69 cm). A hinged door frame may be used to partially cover the escape opening as provided in paragraph (d)(7) of this section. Alternatively, a webbing flap may be used as provided in paragraph (d)(3)(i) of this section. The resultant opening with a webbing flap must be a minimum width of 35 inches (89 cm) and a minimum height of 20 inches (51 cm), with each measurement taken simultaneously. This opening may only be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina.

(B) \ The offshore hooped hard TED escape opening must have a horizontal measurement of no less than 40 inches (102 cm) wide and a forward measurement of no less than 35 inches (89 cm). A hinged door frame may be used to partially cover the escape opening as provided in paragraph (d)(7) of this section. Alternatively, a webbing flap may be used as provided in paragraph (d)(3)(ii) of this section. The resultant escape opening with a webbing flap must have a stretched mesh circumference of no less than 142 inches (361 cm).

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(8) \* \* \*

(i) *Hooped hard TEDs.*

(A) *Inshore hooped hard TED.* The front hoop on an inshore hooped hard TED must have an inside horizontal measurement of at least 35 inches (89 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 20 inches (51 cm).

(B) *Offshore hooped hard TED.* The front hoop on an offshore hooped hard TED must have an inside horizontal measurement of at least 40 inches (102 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 23 1/4 inches (59 cm).

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(d) \* \* \*

(6) *Water deflector fin for hooped hard TEDs.* On a hooped hard TED, a water deflector fin may be welded to the forward edge of the escape opening. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to 4 inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus 1 inch (2.5 cm). The fin must project aft into the