

Federal Communications Commission.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-3067; MB Docket No. 02-258, RM-10500; MB Docket No. 02-259, RM-10501; MB Docket No. 02-262, RM-10504; MB Docket No. 02-264, RM-10505; MB Docket No. 02-265, RM-10556]

Radio Broadcasting Services; Dickens, Floydada, Rankin, San Diego, and Westbrook, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants five proposals that allot new channels to Dickens, Texas, Floydada, Texas, Rankin, Texas, San Diego, Texas, and Westbrook, Texas. The Audio Division, at the request of Maurice Salsa, allots Channel 294A at Dickens, Texas, as the community's first local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 294A can be allotted to Dickens in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (6.3 miles) northeast to avoid a short-spacing to the license site of Station KEJS, Channel 293C2, Lubbock, Texas. The coordinates for Channel 294A at Dickens are 33-40-43 North Latitude and 100-45-00 West Longitude. Filing windows for Channel 294A at Dickens, Texas, Channel 255A at Floydada, Texas, Channel 229C3 at Rankin, Texas, Channel 273A at San Diego, Texas, and Channel 272A at Westbrook, Texas, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order. *See* Supplementary Information, *infra*.

DATES: Effective December 23, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 02-258, 02-259, 02-262, 02-264, 02-265, adopted November 6, 2002, and

released November 8, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision 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.

The Audio Division, at the request of Linda Crawford, allots Channel 255A at Floydada, Texas, as the community's second local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 255A can be allotted to Floydada in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) northeast to avoid a short-spacing to the license site of Station KQBR, Channel 258C1, Lubbock, Texas. The coordinates for Channel 255A at Floydada are 34-00-54 North Latitude and 101-18-29 West Longitude.

The Audio Division, at the request of Robert Fabian, allots Channel 229C3 at Rankin, Texas, as the community's first local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 229C3 can be allotted to Rankin in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) east of Rankin, Texas. The coordinates for Channel 229C3 at Rankin are 31-11-24 North Latitude and 101-48-39 West Longitude. Although concurrence has been requested for Channel 229C3 at Rankin, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Rankin herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

The Audio Division, at the request of Charles Crawford, allots Channel 273A at San Diego, Texas, as the community's second local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 273A can be allotted to San Diego in compliance with the Commission's minimum distance separation requirements with a site

restriction of 9.6 kilometers (5.9 miles) west to avoid a short-spacing to the license site of Station KNDA, Channel 275C2, Alice, Texas. The coordinates for Channel 273A at San Diego are 27-46-29 North Latitude and 98-20-04 West Longitude. Although concurrence has been requested for Channel 273A at San Diego, Texas, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for San Diego herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

The Audio Division, at the request of Maurice Salsa, allots Channel 272A at Westbrook, Texas, as the community's first local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 272A can be allotted to Westbrook in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.2 miles) west to avoid a short-spacing to the license site of Station KFZX, Channel 271C, Gardendale, Texas. The coordinates for Channel 272A at Westbrook are 32-22-24 North Latitude and 101-04-58 West Longitude. Although concurrence has been requested for Channel 272A at Westbrook, Texas, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Westbrook herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Dickens, Channel 294A; by adding Channel 255A at Floydada; by adding Rankin, Channel 229C3; by adding Channel 273A at San Diego; by adding Westbrook, Channel 272A.

Federal Communications Commission.

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Assistant Chief, Audio Division, Media Bureau.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket 020313057-2278-02; I.D. 031102E]

RIN 0648-AP91

Sea Turtle Conservation; Restrictions to Fishing Activities

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

ACTION: Final rule.

SUMMARY: NMFS is enacting a seasonally adjusted gear restriction by closing portions of the Mid-Atlantic Exclusive Economic Zone (EEZ) waters to fishing with gillnets with a mesh size larger than 8-inch (20.3 cm) stretched mesh. The purpose of this action is to reduce the impact of large-mesh gillnet fisheries on endangered and threatened species of sea turtles, primarily the monkfish fishery which uses large-mesh gillnet gear and operates in the area when sea turtles are present.

DATES: This final rule is effective on January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Dennis L. Klemm (address: 9721 Executive Center Drive N., St. Petersburg, FL 33702; ph. 727-570-

5312, fax 727-570-5517, e-mail *Dennis.Klemm@noaa.gov*), or Barbara A. Schroeder (address: 1315 East-West Highway, Silver Springs, MD 20910; ph. 301-713-1401, fax 301-713-0376, e-mail *Barbara.Schroeder@noaa.gov*).

SUPPLEMENTARY INFORMATION: 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*) are listed as endangered. The loggerhead (*Caretta caretta*) and green turtle (*Chelonia mydas*) are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles—even incidentally—is prohibited, with exceptions for takes of threatened species identified in 50 CFR 223.206. The incidental take of endangered species may be authorized only by an incidental take statement provided, or an incidental take permit issued, pursuant to section 7 or 10 of the ESA, respectively.

Background

Beginning in 1995, sea turtle strandings along the coast of North Carolina suddenly and dramatically increased during April and May, and this pattern continued in subsequent years. The increase in strandings coincided with increasing effort in the monkfish gillnet fishery, which first began off North Carolina in 1995. In the spring of 2000, 280 sea turtles stranded in two short time periods, coincident with the monkfish and dogfish gillnet fisheries operating offshore. Four of the carcasses were carrying gillnet gear measuring 10–12 inches (25.4–30.5 cm) stretched mesh, which is consistent with the gear used in the monkfish fishery. Large mesh gillnets are known to be highly effective at catching sea turtles and were the gear of choice in the historical sea turtle fishery. The majority of the turtles stranded in the 2000 event were loggerheads, but Kemp's ridleys were also documented. The northern subpopulation of loggerheads is disproportionately represented in the mid-Atlantic waters off North Carolina, and a number of the stranded loggerheads likely came from this subpopulation. The northern subpopulation is not showing evidence of recovery and continuous mortality as a result of large mesh gillnet fisheries is

likely to impede recovery efforts (TEWG 2000).

A number of changes to the Fishery Management Plan (FMP) for the monkfish fishery over the past few years have resulted in changes in effort and timing of the fishery, and additional changes are expected as part of future FMP revisions. Various temporary protections to reduce sea turtle mortality in large mesh gillnets have been enacted by NMFS since the 2000 stranding event (65 FR 31500, May 18, 2000; 66 FR 28842, May 25, 2001; and 67 FR 13098, March 21, 2002). Detailed background information on the events leading to these restrictions may be found in each notice and is not repeated here. The most recent of these temporary protections, an interim final rule effective from March 15 to November 10, 2002, implemented a series of seasonally-adjusted closures in federal waters to move large-mesh gillnetting north in advance of sea turtle migrations. In the interim final rule, NMFS stated that it was considering adopting those restrictions as a final rule and took comments on that proposal through June 19, 2002 (67 FR 13098).

Seasonally Adjusted Closure of Large-mesh Gillnet Fishing in the Mid-Atlantic

The provisions of the interim final rule (67 FR 13098, March 21, 2002) established seasonally adjusted gear restrictions by closing portions of the Mid-Atlantic Exclusive Economic Zone (EEZ) waters to fishing with gillnets with a mesh size larger than 8-inch (20.3-cm) stretched mesh to protect migrating sea turtles. The areas and times closed to fishing with gillnets larger than 8-inch (20.3-cm) stretched mesh were as follows: waters north of 33°51.0' N (North Carolina/South Carolina border at the coast) and south of 35° 46.0' N (Oregon Inlet) - at all times; waters north of 35°46.0' N (Oregon Inlet) and south of 36° 22.5' N (Currituck Beach Light, NC) - from March 16 through January 14; waters north of 36°22.5' N (Currituck Beach Light, NC) and south of 37°34.6' N (Wachapreague Inlet, VA) - from April 1 through January 14; waters north of 37° 34.6' N (Wachapreague Inlet, VA) and south of 37°56.0' N (Chincoteague, VA) - from April 16 through January 14. Waters north of 37°56.0' N (Chincoteague, VA) were not affected by the interim final rule. NMFS promulgated the interim final rule to prevent further mortalities and other takes of listed species in large-mesh gillnet fisheries, of which the federal monkfish fishery is the most likely to be