



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
One Blackburn Drive
Gloucester, MA 01930-2298

APR 30 2004

Small Entity Compliance Guide

Dear Pound Net Licensee:

This letter serves as a small entity compliance guide and to inform you that the Secretary of Commerce has approved a final rule that restricts the use of certain pound leaders in the Virginia Chesapeake Bay. This final rule, issued under the authority of the Endangered Species Act of 1973, as amended (ESA), is necessary to conserve threatened and endangered sea turtles.

Through this final rule, NOAA Fisheries prohibits the use of all offshore pound net leaders from May 6 to July 15 each year in the Virginia waters of the mainstem Chesapeake Bay south of 37° 19.0' and west of 76° 13.0', and all waters south of 37° 13.0' to the Chesapeake Bay Bridge Tunnel at the mouth of the Chesapeake Bay, and the James and York Rivers downstream of the first bridge in each tributary. Offshore pound nets are defined as those nets set with the inland end of their leader greater than 10 horizontal feet from the mean low water line. Outside this area, the prohibition of leaders with greater than or equal to 12 inches stretched mesh and leaders with stringers, as established by the June 17, 2002 interim final rule, will remain in effect from May 6 to July 15 each year. Additionally, this final rule also retains the framework mechanism currently in place, by which NOAA Fisheries may make changes to the restrictions and/or their effective dates on an expedited basis in order to respond to new information and protect sea turtles. The year-round reporting and monitoring requirements for this fishery established by the 2002 interim final rule also remain in effect. Through this final rule, NOAA Fisheries also provides an exception to the prohibition on incidental take of threatened sea turtles for pound net fishermen in compliance with these regulations.

Does this new rule apply to me?

The new leader prohibitions apply to you if you fish with a pound net set with the inland end of the leader greater than 10 horizontal feet from the mean low water line in the area south of 37° 19.0' and west of 76° 13.0', and all waters south of 37° 13.0' to the Chesapeake Bay Bridge Tunnel at the mouth of the Chesapeake Bay, and the James River downstream of the Hampton Roads Bridge Tunnel (I-64; approximately 36° 59.55' N. lat., 76° 18.64' W. long.) and the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37° 14.55' N. lat., 76° 30.40' W. long.) (see attached map).

If you fish outside this area, the same leader mesh size restrictions included in the 2002 interim final rule apply to you. Specifically, all pound net leaders must have stretched mesh less than 12 inches and must not use stringers from the Maryland-Virginia State line (approximately 37° 55' N. lat., 75° 55' W. long.) to the COLREGS line at the mouth of the Chesapeake Bay, including the Great Wicomico River downstream of the Jessie Dupont Memorial Highway Bridge (Route



200; approximately 37° 50.84' N. lat, 76° 22.09' W. long.), the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37° 37.44' N. lat, 76° 25.40' W. long.), and the Piankatank River downstream of the Route 3 Bridge (approximately 37° 30.62' N. lat, 76° 25.19' W. long.). South of 37° 19.0' N. lat. and west of 76° 13.0' W. long., and all waters south of 37° 13.0' N. lat. to the Chesapeake Bay Bridge Tunnel, the leader mesh size restriction applies to those nets set with the inland end of the leader 10 horizontal feet or less from the mean low water line.

The reporting and monitoring requirements established by the 2002 interim final rule remain in effect. These requirements apply to all pound net fishermen in any area of the Virginia Chesapeake Bay or its tributaries.

What do I have to do to comply with the regulations?

Leader prohibitions:

From May 6 to July 15 in a portion of the southern Chesapeake Bay (as specified in the first paragraph in the preceding section), all offshore pound net leaders must be removed from the water so that no part of the leader contacts the water.

Leader mesh size restrictions:

From May 6 to July 15 outside the leader prohibited area (as specified in the second paragraph in the preceding section), any pound net leader with stretched mesh measuring 12 inches or greater and any pound net leader with stringers must be removed from the water so that no part of the leader contacts the water. Fishermen may replace their leaders with stretched mesh less than 12 inches.

Reporting requirement:

If you discover a sea turtle alive and uninjured in any portion of the pound net gear (in the pound, heart, or leader) at any time during the year, you must report the incident to the NOAA Fisheries Northeast Regional Office, (978) 281-9328 or FAX (978) 281-9394, within 24 hours of returning from the trip on which you made the discovery.

If you discover a sea turtle dead or injured in any portion of the pound net gear (in the pound, heart, or leader) at any time during the year, you must immediately notify the NOAA Fisheries Northeast Regional Office, (978) 281-9328 or FAX (978) 281-9394, and the appropriate rehabilitation or stranding network, as determined by NOAA Fisheries. The NOAA Fisheries Northeast Regional Office will provide you with the necessary contact information for the closest rehabilitation or stranding network.

To facilitate your reporting responsibilities, NOAA Fisheries suggests that you fill out the Sea Turtle Stranding and Salvage Network reporting form, as used by the state sea turtle stranding networks, whenever a sea turtle is captured in your pound net operations. Completing this form is not mandatory, but it is recommended to ensure the necessary information is collected and to aid in your reporting process. Enclosed are several copies of this form; please contact NOAA Fisheries should you need additional blank forms. You can either call NOAA Fisheries with the information, FAX the form or notification to (978) 281-9394, or send the form to the NOAA

Fisheries Northeast Regional Office, Protected Resources Division, at One Blackburn Drive, Gloucester, MA 01930. If you choose not to use such a form when reporting the sea turtle interaction, please provide the following information with your report: the date and time when the animal was found, location of the pound, species information (alive or dead, condition of animal, approximate size, species description), and a description of the animal's condition at the time of release.

Monitoring requirement:

Pound net fishing operations in Virginia waters must take a NOAA Fisheries-approved observer if requested by the Northeast Regional Administrator.

What could happen if I don't comply with the regulations?

Under the ESA, incidentally taking endangered or threatened species is prohibited, with certain exceptions. Unless the take is authorized pursuant to a regulation, a permit, or in the Incidental Take Statement of a Biological Opinion, the person who incidentally takes a listed animal is subject to criminal penalties and fines. If you do not comply with the regulations on Virginia pound nets, you could be subject to civil or criminal penalties and fines.

If you fail to comply with the regulations and do not take a sea turtle, you could still be subject to civil or criminal penalties and/or fines.

If you have a complaint or concern about the lack of compliance with these regulations, please contact NOAA Fisheries at (978) 281-9328.

When will the restrictions be in effect?

The leader prohibitions and leader mesh size restrictions will be effective from May 6 to July 15 each year. The framework mechanism may be triggered by the documentation of an entangled sea turtle from May 6 to July 15. Through the framework mechanism, NOAA Fisheries may extend the effective dates of the regulations for up to 15 days, not to go beyond July 30.

The reporting requirement is in effect throughout the year. You will be notified if you have been selected to take a NOAA Fisheries-approved observer at any time during the year.

What will prompt NOAA Fisheries' use of the framework mechanism?

The framework mechanism originally established by the 2002 interim final rule, and retained in this final rule, enables NOAA Fisheries to make changes to the restrictions and/or their effective dates on an expedited basis to protect sea turtles. For instance, if NOAA Fisheries believes that sea turtles may still be vulnerable to entanglement in pound net leaders after July 15, based on, for example, observer reports, water temperature and the timing of sea turtles' migration, NOAA Fisheries may extend the effective dates of this regulation for up to 15 days, not to go beyond July 30. Additionally, from May 6 to July 15, if monitoring of pound net leaders reveals that one sea turtle is entangled alive in a pound net leader or that one sea turtle is entangled dead and NOAA Fisheries determines that the entanglement contributed to its death, then NOAA Fisheries may determine that additional restrictions are necessary to conserve sea turtles and prevent entanglements. Such additional restrictions may include reducing the allowable mesh size for

pound net leaders or further prohibiting pound net leaders. Any additional restrictions would not be in effect later than July 30.

How will NOAA Fisheries notify me if the restrictions are extended or if additional measures are implemented?

Should NOAA Fisheries determine that the regulations should be extended or an additional restriction is warranted, NOAA Fisheries would immediately file a final rule and justification for the measures with the Office of the Federal Register, announce the change on the NOAA Weather Radio and the United States Coast Guard mariners report, and notify you of the change by letter.

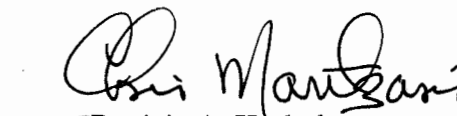
Are these the same restrictions as those included in the proposed rule?

Based upon public comments received, NOAA Fisheries determined that several modifications to the measures included in the proposed rule were warranted. Specifically, the area in the southern portion of the Chesapeake Bay where all pound net leaders are prohibited was reduced to exclude those nearshore nets set with the inland end of the leader 10 horizontal feet or less from the mean low water line. Also, the final rule did not change the restricted leader mesh size outside the leader prohibited area from 12 inches to 8 inches stretched mesh. Finally, the final rule retained the framework mechanism included in the 2002 interim final rule to respond to new information on the interactions between sea turtles and pound nets and ensure that sea turtles can be protected from additional take should monitoring document the entanglement of a live or dead sea turtle outside the leader prohibited area.

A summary of the public comments and NOAA Fisheries responses is included in the final rule. An Environmental Assessment has also been prepared, which examines the biological, economic, and social impacts that may result from the issuance of this final rule. You are encouraged to obtain a copy of the final rule and Environmental Assessment by calling (978) 281-9328. A copy of the February 6, 2004 proposed rule, the final rule, and the Environmental Assessment can also be obtained on the NOAA Fisheries Northeast Region Protected Resources Division web site (under Gear Restrictions for the Virginia Pound Net Fishery) at http://www.nero.noaa.gov/prot_res/ProResDiv/LinkforSeaTurtles.htm OR the rule can be found through a link to the Office of the Federal Register at http://www.access.gpo.gov/su_docs/fedreg/frcont04.html. Note that the proposed rule, published on February 6, 2002, contains more detail on sea turtle and pound net interactions and the justification for additional action.

This Small Entity Compliance Guide complies with section 212 of the Small Business Regulatory Enforcement and Fairness Act of 1996. Thank you for your continued support in the protection of endangered and threatened sea turtles in the Virginia waters of the Chesapeake Bay.

Sincerely,


for Patricia A. Kurkul
Regional Administrator

Enclosures