



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

Small Entity Compliance Guide

Dear Pound Net Licensee:

This letter serves as a small entity compliance guide and to inform you that on June 12, 2002, the Secretary of Commerce approved an interim final rule that restricts the use of certain pound leaders in the Virginia Chesapeake Bay and that imposes year round reporting and monitoring requirements. This interim 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 and to enable the National Marine Fisheries Service (NMFS) to gather further information about sea turtle interactions with the pound net fishery.

Through this interim final rule, NMFS prohibits the use of all pound net leaders with stretched mesh 12 inches (30.5 cm) or greater and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay and portions of the Virginia tributaries, effective from June 12 to June 30, 2002, and then from May 8 to June 30 each subsequent year. The interim final rule also establishes a framework mechanism that allows NMFS to either extend the effective date of the leader restrictions or impose additional restrictions if determined necessary. The interim final rule also includes two additional components: a requirement that you report interactions with sea turtles in Virginia pound net fishery operations and a requirement that you allow a NMFS-approved observer to monitor your pound net fishing operations if requested by the Northeast Regional Administrator.

Does the rule apply to me?

The leader restrictions apply to all fishermen using pound net leaders with stretched mesh 12 inches or greater and all fishermen using pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia State line (approximately 38 N latitude) to the COLREGS line at the mouth of the Chesapeake Bay; the James River downstream of the Hampton Roads Bridge Tunnel (I-64); the York River downstream of the Coleman Memorial Bridge (Route 17); and the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3).



The reporting requirement will apply to all pound net fishermen in Virginia waters once it is approved by the Office of Management and Budget. The observer/monitoring requirement applies to all pound net fishermen in Virginia waters beginning on the effective date of the interim final rule, June 12, 2002.

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

Leader restrictions:

During the time frame of the restrictions and in the area specified, 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. Fishermen may replace their leaders with stretched mesh less than 12 inches.

Reporting requirement:

At this time, compliance with the reporting measures is not required because the Office of Management and Budget has not yet approved the collection of information pursuant to the Paperwork Reduction Act. You will receive notification once this requirement is effective.

Once the reporting requirements become effective, if you discover a turtle alive and uninjured in a pound net operation at any time during the year, you must report the incident to the NMFS Northeast Regional Office, (978) 281-9388 or fax (978) 281-9394, within 24 hours of returning from the trip on which you made the discovery. A draft reporting form is attached to this letter; this form should be filled out when takes are discovered and sent to the NMFS Northeast Regional Office, Protected Resources Division, at One Blackburn Drive, Gloucester, MA 01930. If portions of this reporting form are unclear, please contact NMFS at (978) 281-9388. Furthermore, once the reporting requirements become effective, if a turtle is taken in a pound net operation at any time during the year, and is determined to be injured, or if a turtle is captured dead, you must immediately notify the NMFS Northeast Regional Office, (978) 281-9388 or fax (978) 281-9394, so the appropriate rehabilitation or stranding network can be contacted.

Monitoring requirement:

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

Resuscitation and handling requirement:

Sea turtle resuscitation and handling techniques were published in the Federal Register on December 31, 2001, and these mandatory procedures can be found in 50 CFR part 223.206(d)(1). A summary of these regulations is as follows:

Resuscitation must be attempted on sea turtles that are comatose or inactive but not dead by placing the turtle on its bottom shell (plastron) and elevating its hindquarters

at least 6 inches for a period of 4 up to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Sea turtles being resuscitated must be shaded and kept wet or moist, but not placed in a container holding water. Those turtles that are actively moving upon initial capture, revive and become active after resuscitation, or are dead, must be released when the engine gears are in neutral position and in areas where they are unlikely to be recaptured or injured by vessels.

When will the restrictions be in effect?

During 2002, the leader restrictions will be effective from June 12 to June 30. In each subsequent year, the leader restrictions will be effective from May 8 to June 30. NMFS may extend the effective dates of this regulation for up to 30 days, not to exceed July 30.

As mentioned, the reporting requirement will not be effective until the Office of Management and Budget approves the collection of information pursuant to the Paperwork Reduction Act. NMFS will notify you when this occurs. You will also be subsequently notified if the Northeast Regional Administrator requires you to take a NMFS-approved observer.

What will prompt NMFS' use of the framework mechanism?

The framework mechanism included in the interim final rule enables NMFS to make changes to the restrictions and/or their effective dates on an expedited basis to protect sea turtles. For instance, if NMFS believes that sea turtles may still be vulnerable to entanglement in pound net leaders after June 30, based on, for example, observer reports, water temperature and the timing of sea turtles' migration, NMFS may extend the effective dates of this regulation for up to 30 days, not to exceed July 30. Additionally, if monitoring of pound net leaders reveals that one sea turtle is entangled alive in a pound net leader less than 12 inches stretched mesh or that one sea turtle is entangled dead and NMFS determines that the entanglement contributed to its death, then NMFS 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 prohibiting all pound net leaders regardless of mesh size in Virginia waters. However, any additional restrictions would not be in effect later than July 30 each year.

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

Should NMFS determine that the regulations should be extended or an additional restriction is warranted, NMFS 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

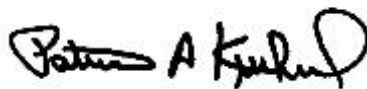
the United States Coast Guard mariners report, and notify you of the change by letter.

NMFS has prepared an Environmental Assessment that examines the biological, economic, and social impacts that may result from the issuance of this interim final rule. You are encouraged to obtain a copy of the interim final rule and/or Environmental Assessment, or further information on this action, by calling (978) 281-9328. A copy of the June 12, 2002, interim final rule (which will publish June 17, 2002) can also be obtained through a link to the Office of the Federal Register at http://www.access.gpo.gov/su_docs/fedreg/frcont02.html. Note that the proposed rule, published on March 29, 2002, contains more detail on the justification for this action and can be found on the same Office of the Federal Register web site (under National Oceanic and Atmospheric Administration).

NMFS continues to seek comments on this interim final rule to assist in the development of a final rule for Virginia pound nets. Comments must be postmarked or transmitted by facsimile by 5 p.m., Eastern Standard Time, on July 17, 2002. Comments should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments and requests for supporting documents may also be sent via fax to 978-281-9394. Comments will not be accepted if submitted via e-mail or the Internet.

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,

A handwritten signature in black ink, appearing to read "Patricia A. Kurkul". The signature is stylized and cursive.

Patricia A. Kurkul
Regional Administrator

Enclosure

DRAFT
Incident Report of Sea Turtle Take
Virginia Pound Net Fishery

Date _____ Time (specimen found) _____

Species Taken: Loggerhead Kemp's ridley Leatherback
 Green Unknown turtle
(*please circle and describe how specimen was identified in Comments*)

Animal: Alive / Dead (*please circle*)

Specimen Decomposition: FRESH SLIGHTLY MODERATELY SEVERELY

Approximate length _____ Approximate width _____
(*please designate cm/m or inches*)

Condition of specimen/description of animal

Animal tagged: YES / NO (*please circle and record all tag numbers*)

Tag # _____

Photograph attached: YES / NO (*please circle*)

(*please label species, date, geographic site and name on photo back*)

Fate of animal _____

Geographic Site _____

Location: Lat/Long _____

Approx. depth of pound _____

Location where sea turtle found (*pound, leader, etc.*) _____

Mesh size of leader (if applicable) _____

Stringers used? YES / NO (please circle)

Debris in leader? _____

Weather conditions _____

Water temp: Surface _____ Below midwater (if known) _____

Tide state (Ebb or Flood) _____

Entanglement on downcurrent or upcurrent side of net? _____

Comments/other (include justification on how species was identified)

Observer's Name _____

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number.