



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

JUL - 7 2006

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 published a final rule that requires the use of a modified leader, as described below, for offshore pound nets in a portion of the Virginia Chesapeake Bay (Pound Net Regulated Area I)¹ and allows the use of modified pound net leaders in the remainder of the Virginia Chesapeake Bay from May 6 to July 15 each year. This final rule, issued under the authority of the Endangered Species Act of 1973, as amended (ESA), responds to new information generated by gear research. It is intended to conserve sea turtles listed as threatened under the ESA and to help enforce the provisions of the ESA, including the provisions against takes of endangered species, while enabling fishermen to use leaders, an important component of pound net gear, during the regulated period.

Under previous regulations, offshore pound net leaders may not be set in Pound Net Regulated Area I during the period of May 6 through July 15 each year. An offshore pound net leader is a leader with the inland end set greater than 10 horizontal feet from the mean low water line. This final rule requires any offshore pound net leader set in Pound Net Regulated Area I during the time period of May 6 through July 15 each year to meet the definition of a modified leader. A modified pound net leader is defined as a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that: (a) the mesh size is equal to or less than 8 inches stretched mesh; (b) at any particular point along the leader the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point; (c) the mesh is held in place by vertical lines that extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; (d) the vertical lines are equal to or greater than 5/16 inch in diameter and strung vertically at a minimum of every 2 feet;

¹ Pound Net Regulated Area I is defined as the area 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 (extending from approximately 37°05' N. lat., 75°59' W. long. to 36°55' N. lat., 76°08' W. long.) at the mouth of the Chesapeake Bay, and the portion of 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.).



and (e) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line.

In Pound Net Regulated Area II², and for nearshore pound net leaders in Pound Net Regulated Area I, the mesh size and stringer restrictions that are currently in effect will remain in effect. However, for Pound Net Regulated Area II and nearshore leaders in Pound Net Regulated Area I, this final rule creates an exception to those restrictions by allowing fishermen to set modified pound net leaders should they so choose.

The modified leader design was developed and tested during experiments conducted by NOAA's National Marine Fisheries Service (NMFS) and pound net operators in 2004 and 2005.

Does this new rule apply to me?

The option to use a modified leader applies to you if you fish with a pound net in the Virginia Chesapeake Bay.

If you fish with a pound net with the inland end of the leader *greater* than 10 horizontal feet from the mean low water line in Pound Net Regulated Area I, you are required to use a modified leader. If you do not employ a modified pound net leader, you must remove your offshore pound net leaders from the water from May 6 to July 15.

If you fish with a pound net set with the inland end of the leader 10 horizontal feet or less from the mean low water line in Pound Net Regulated Area I, or fish with a pound net in Pound Net Regulated Area II, you may use a modified leader if you so choose. If you do not choose to set a modified pound net leader, the current leader mesh size and stringer restrictions still apply to you. That is, all pound net leaders must have stretched mesh less than 12 inches and must not use stringers from May 6 to July 15 each year.

This final rule does not affect the framework mechanism that is currently in place and by which NMFS 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 under the existing regulations also remain in effect. These requirements apply to all pound net fishermen in any area of the Virginia Chesapeake Bay or its tributaries.

² Virginia waters of the Chesapeake Bay outside of Pound Net Regulated Area I, extending to the Maryland-Virginia State line (approximately 37°55' N. lat., 75°55' W. long.), 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.) to the COLREGS line at the mouth of the Chesapeake Bay.

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

Under this new rule, you do not have to change your existing fishing practices if you already have been in compliance with the previous regulations. However, if you decide to set an offshore pound net leader in Pound Net Regulated Area I, or if you decide to switch to a modified pound net leader in nearshore waters in Pound Net Regulated Area I or anywhere in Pound Net Regulated Area II, it must meet the definition of a modified pound net leader.

A modified pound net leader is defined as a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that:

- (a) the mesh size is equal to or less than 8 inches stretched mesh;
- (b) at any particular point along the leader the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point;
- (c) the mesh is held in place by vertical lines that extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader;
- (d) the vertical lines are equal to or greater than 5/16 inch in diameter and strung vertically at a minimum of every 2 feet; and
- (e) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line.

How will I know if the vertical line I want to use meets the definition of hard lay line?

Due to the variations in manufacturing hard lay line in the cordage industry, NMFS cannot provide a specific definition of hard lay line at this time. As you know, hard lay is a technical term used by the cordage industry to describe line that is purposefully made to be stiff. NMFS acknowledges that there may be some variation in what is characterized as hard lay lines, depending on how the manufacturer makes the line, but the characteristics of hard lay line in the water should be similar. The lines used in the 2005 modified leader experiment met the characteristics of hard lay lines. The vertical hard lay lines used in the experiment were made of polyester wrapped around Polysteel, which is a blend of polypropylene and polyethylene, and were coated with copper paint to prevent fouling, which also added a small amount of stiffness to the lines. The diameter of the lines was 5/16 inch and contained approximately 42 twists of the strands per foot of line. Twists can be added to fibers, yarns, and strands during the manufacturing process, so a different number of twists at different stages in the process may achieve an equivalent stiffness to the 42 twists of the strands per foot of line used in the 2005 experiment. The vertical lines used in the 2005 experiment were not easily bent and remained stiff in the water regardless of the submergence duration. It is important that the hard lay lines used in the modified leaders perform the same way as those used in the 2005 experiment, in order to reduce the risk of sea turtle entanglement in pound net leaders. Fishermen are afforded the flexibility to use other types of hard lay line as long as it performs the same way as the line in the 2005 experiment and is inflexible and remains stiff regardless of soak time.

If you are unclear about whether your hard lay lines would be similar to those used in the

experiment, NMFS encourages you to contact Henry Milliken at (508) 495-2294 before purchasing your desired hard lay line.

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. Take is defined as "to harass, harm, pursue, hunt, shoot, capture, or collect, or to attempt to engage in any such conduct." Incidental take is defined as take that is incidental to, and not the purpose of, the execution of an otherwise lawful activity. 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 civil and criminal penalties.

If you do not comply with the regulations on Virginia pound nets, you could be subject to civil or criminal penalties and/or 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) 281-9300 extension 6435.

When will the pound net restrictions be in effect?

The restrictions on pound net leaders will be effective from May 6 to July 15 each year.

As established by previous regulations, the reporting requirement is in effect throughout the year. You will be notified if you have been selected to take a NMFS-approved observer at any time during the year.

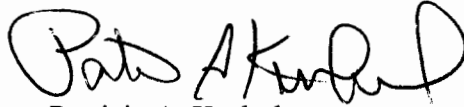
Are these the same restrictions as those included in the April 2006 proposed rule?

Based upon public comments received, NMFS has determined a modification to the measures included in the proposed rule is warranted. Specifically, the proposed rule stated that the existing mesh size and stringer restrictions on nearshore pound net leaders in Pound Net Regulated Area I and on all pound net leaders in Pound Net Regulated Area II would remain in place and are not affected by the proposed rule. In this final rule, the mesh size and stringer restrictions continue to remain in effect, however, NMFS has decided to allow fishermen to use leaders meeting the definition of modified pound net leaders should they so choose. Note that the use of modified leaders in nearshore waters of Pound Net Regulated Area I and all waters of Pound Net Regulated Area II is not required at this time.

A summary of the public comments and NMFS 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) 281-9300 extension 6525. A copy of the April 17, 2006 proposed rule, the final rule, and the Environmental Assessment can also be obtained on the NMFS 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/frcont06.html.

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 "Pat A Kurkul". The signature is fluid and cursive, with the first name "Pat" being particularly prominent.

Patricia A. Kurkul
Regional Administrator