



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5505
<http://sero.nmfs.noaa.gov>

F/SER32:SH

Dear Virginia Pound Net Licensee:

FEB 09 2015

This letter is to inform you of a final rule published in the *Federal Register* on February 9, 2015, by the National Marine Fisheries Service that applies to Virginia pound nets fished in certain areas. This letter also serves as the small entity compliance guide¹ with summary information on this final rule.

Background

The final rule amends regulations for the Bottlenose Dolphin Take Reduction Plan (Plan) under the Marine Mammal Protection Act (MMPA) and sea turtle conservation under the Endangered Species Act (ESA). The purposes of this rule are to (1) reduce deaths and serious injuries of bottlenose dolphins in the Virginia pound net fishery as recommended by the Bottlenose Dolphin Take Reduction Team, and (2) amend existing regulations and definitions for sea turtle conservation under the ESA for consistency.

In general, the rule requires the following under the MMPA and/or the ESA. Under the MMPA, it requires the year-round use of modified pound net leaders on offshore nets fished in southern Virginia waters of the mainstem Chesapeake Bay and state coastal waters (Bottlenose Dolphin Pound Net Regulated Area; Figure 1). Under both the MMPA and ESA, the rule includes:

- (1) A requirement for fishermen to attend a one-time compliance training before setting modified pound net leaders, replacing the previous requirement under the ESA regulations for an annual modified pound net leader inspection.
- (2) Revised definitions for nearshore and offshore pound nets.
- (3) New Virginia pound net gear related definitions and requirements to fish all sections of the gear at the same time.

Does this rule apply to me?

This rule applies to you if 1 or 2 or both below apply:

- (1) You use a nearshore or offshore pound net in either the newly established Bottlenose Dolphin Pound Net Regulated Area (Figure 1) under the MMPA, or the existing Regulated Areas I and II under the ESA sea turtle conservation regulations (Figure 2).
- (2) You use a modified pound net leader on your net in the Virginia Chesapeake Bay.

The definitions for both offshore and nearshore pound nets have changed under this rule from the previous definitions under the ESA regulations for sea turtle conservation. An *offshore pound net* now means a pound net with any part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in water greater than or equal to 14 feet (4.3 m) at any tidal condition. A *nearshore pound net* now means a pound net with every part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in less than 14 feet (4.3 m) of water at any tidal condition.

¹ This letter complies with Section 12 of the Small Entity Compliance Guide of the Small Business Regulatory Enforcement Fairness Act of 1996.



When will these new restrictions be in effect?

The restrictions in the final rule are effective beginning March 11, 2015. Once effective, they are in place year-round in specified areas for both offshore and nearshore pound nets as described above.

How do I comply with the regulations?

If you are using either an offshore or nearshore pound net, you must do the following to comply:

(1) Offshore pound nets:

- Must have a modified pound net leader year-round within the Bottlenose Dolphin Pound Net Regulated area (Figure 1). Outside that area, the previous ESA regulations for sea turtle conservation (e.g., time frame, mesh size restrictions) in 50 CFR 223.206(d)(10) still apply (Figure 2). Although the definitions for modified pound net leaders and hard lay lines were slightly changed in this rule, they remain functionally the same as in the prior ESA regulations and do not require changes to gear that was in compliance with those regulations. Please see the section below for the new definitions.
- Attend a one-time educational compliance training before setting your modified pound net leader anywhere within Virginia state waters. You must also keep on board your vessel a valid modified pound net leader training certificate issued by the National Marine Fisheries Service. Attending this compliance training replaces the need to have your modified pound net leader inspected annually before setting.
- Year-round, pound nets must be fished with all three continuous sections (i.e., pound, heart, and leader) in the Bottlenose Dolphin Pound Net Regulated Area (Figure 1) or Regulated Areas I and II under the ESA sea turtle conservation regulations (Figure 2). An exception to this requirement is that one or more sections may be missing for a maximum period of 10 days for purposes of setting, removing, and/or repairing pound nets.

(2) Nearshore pound nets:

- Year-round, pound nets must be fished with all three continuous sections (i.e., pound, heart, and leader) in the Bottlenose Dolphin Pound Net Regulated Area (Figure 1) or Regulated Areas I and II under the ESA sea turtle conservation regulations (Figure 2). An exception to this requirement is that one or more sections may be missing for a maximum period of 10 days for purposes of setting, removing, and/or repairing pound nets.
- Although this rule does not require nearshore pound nets to have a modified pound net leader, if you chose to use a modified pound net leader anywhere within Virginia state waters it does require attending a one-time compliance training. You must also keep on board your vessel a valid modified pound net leader training certificate issued by the National Marine Fisheries Service. Attending this compliance training replaces the need to have your modified pound net leader inspected annually before setting if you chose to use one.

What are the pertinent definitions in this rule that are mentioned in this letter?

The following are definitions for the terms underlined above and as codified in the final rule:

- Bottlenose Dolphin Pound Net Regulated Area (Figure 1) means all Virginia marine waters of the Atlantic Ocean within 3 nautical miles (5.56 km) of shoreline and all adjacent tidal waters, bounded on the north by 38°01.6'N. (Maryland/Virginia border) and on the south by 36°33'N (Virginia/North Carolina border); and all southern Virginia waters of the mainstem Chesapeake Bay bounded on the south and west by the Hampton Roads Bridge Tunnel across the James River and the Coleman Memorial Bridge across the York River; and north and east by the following points connected by straight lines in the order listed:

| Point | Area Description |
|-------|---|
| 1 | Where 37°19.0' N. lat. meets the shoreline of the Severn River fork, near Stump Point, Virginia (western portion of Mobjack Bay), which is approximately 76°26.75' W. long. |
| 2 | 37°19.0' N. lat., 76°13.0' W. long. |
| 3 | 37°13.0' N. lat., 76°13.0' W. long. |
| 4 | Where 37°13.0' N. lat. meets the eastern shoreline of Chesapeake Bay, Virginia, near Elliotts Creek, which is approximately 76°00.75' W. long. |

- Hard lay line means lines that are at least as stiff as 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and 42 visible twists of strands per foot of line.
- Modified pound net leader means 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 the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; 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; the mesh is held in place by a bottom chain that forms the lowermost part of the pound net leader; the vertical lines 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; the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and the vertical lines are hard lay lines.
- Nearshore pound net means a pound net with every part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in less than 14 feet (4.3 m) of water at any tidal condition.
- Offshore pound net means a pound net with any part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in water greater than or equal to 14 feet (4.3 m) at any tidal condition.
- Pound net means a fixed entrapment gear attached to posts or stakes with three continuous sections from offshore to inshore consisting of:
 - (1) A pound made of mesh netting that entraps the fish.

- (2) At least one heart made of a mesh netting that is generally in the shape of a heart and aids in funneling fish into the pound.
- (3) A leader, which is a long, straight element consisting of mesh or vertical lines that directs the fish offshore towards the pound.

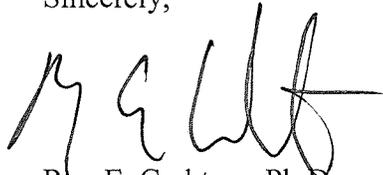
When and how will the required compliance training be scheduled?

The one-time modified pound net leader compliance training replaces the previously required modified pound net leader inspection that was conducted annually. The compliance training sessions will begin shortly after the final rule is published in the *Federal Register* on February 9, 2015. To schedule the training to meet this requirement, please contact Glenn Salvador at 757-414-0128. We will work with you to find a mutually agreeable date and location.

Complete regulations and definitions for the Plan are codified at 50 CFR 229.2, 229.3, and 229.35 in accordance with section 118(f) of the MMPA. Complete definitions and regulations under the ESA for sea turtle conservation are codified at 50 CFR 222.102, 223.205, and 223.206.

If you have any questions or would like further information, please contact Stacey Horstman at 727-824-5312 or Stacey.Horstman@noaa.gov.

Sincerely,



Roy E. Crabtree, Ph.D.
Regional Administrator

cc: F/GAR – D. Gouveia; C. Upite
GCSE – S. Grimes
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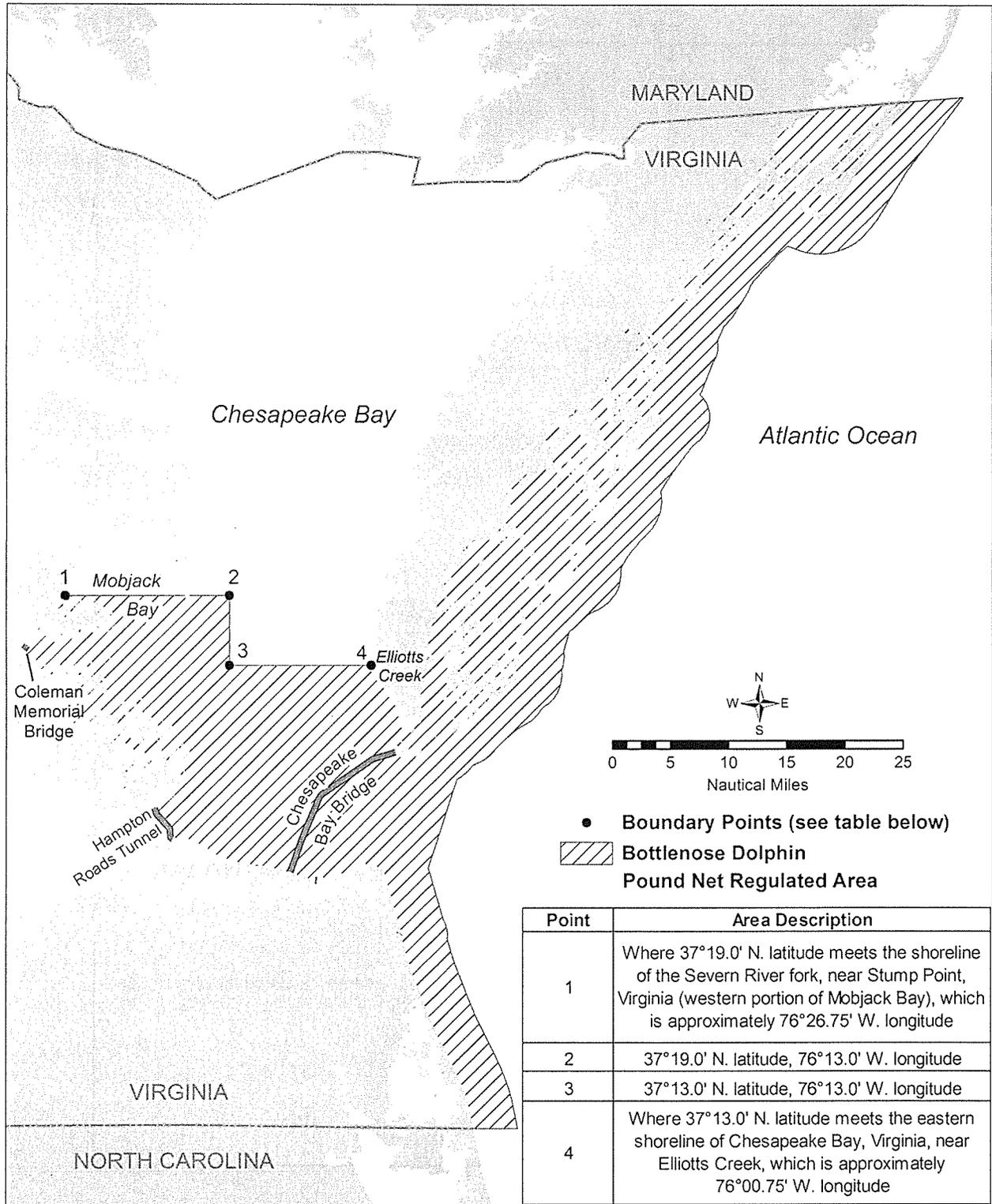


Figure 1: Bottlenose Dolphin Pound Net Regulated Area for the Plan's pound net regulations.

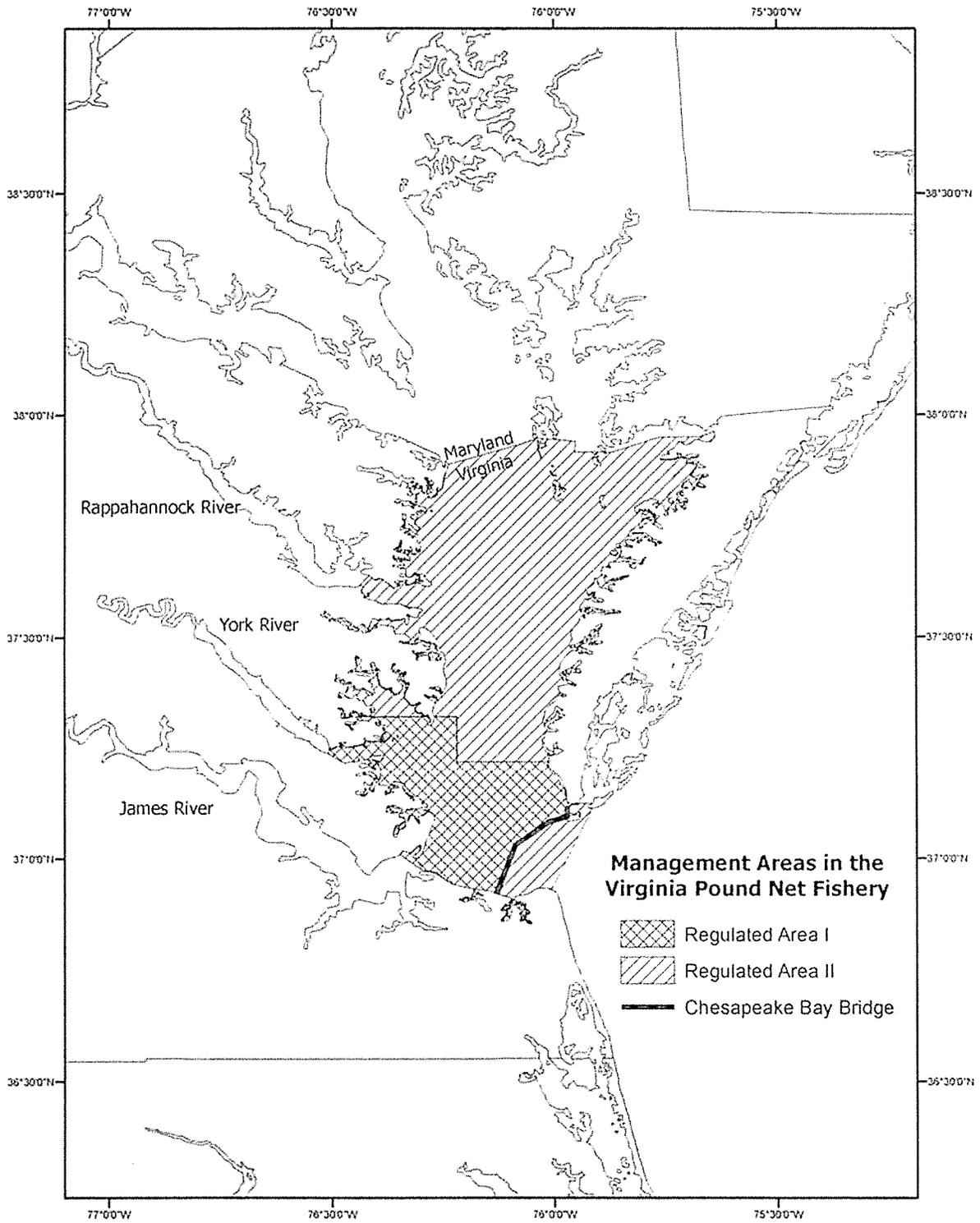


Figure 2: Pound Net Regulated Areas I and II under the ESA sea turtle conservation regulations in Chesapeake Bay, Virginia.