

652.247-70 [Amended]

■ 125. In newly redesignated section 652.247-70, in the introductory text, remove “642.1406-2-70(a)” and add “647.305-70” in its place and remove the clause date “(JUL 1988)” and add in its place “(DATE)”.

652.247-71 [Amended]

■ 126. In newly redesignated section 652.247-71, in the introductory text, remove “642.1406-2-70(b)” and add “647.305-71” in its place and remove the clause date “(DEC 1994)” and add in its place “(DATE)”.

Dated: December 23, 2014.

Corey M. Rindner,

Procurement Executive, Department of State.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 222, 223, and 229**

[Docket No. 110812495-4999-03]

RIN 0648-BB37

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan; Sea Turtle Conservation; Modification to Fishing Activities

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) issues this final rule amending the Bottlenose Dolphin Take Reduction Plan (BDTRP) and its implementing regulations under the Marine Mammal Protection Act (MMPA). The rule requires the year-round use of modified pound net leaders for offshore Virginia pound nets in specified waters of the lower mainstem Chesapeake Bay and coastal state waters. Virginia pound net-related definitions, gear prohibitions, and non-regulatory measures are also finalized. This final rule is based on consensus recommendations of the Bottlenose Dolphin Take Reduction Team (BDTRT). For consistency, NMFS also amends current regulations and definitions for Virginia pound nets under the Endangered Species Act (ESA) for sea turtle conservation.

DATES: This final rule is effective March 11, 2015.

ADDRESSES: The proposed rule, the BDTRP and its amendments, the BDTRT meeting summaries with consensus recommendations, and other background documents are available at www.regulations.gov, or the Take Reduction Team Web site: <http://www.nmfs.noaa.gov/pr/interactions/trt/bdtrp.htm>, or by submitting a request to Stacey Horstman (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Stacey Horstman, NMFS Southeast Region, Stacey.Horstman@noaa.gov, 727-824-5312; Kristy Long, NMFS Office of Protected Resources, Kristy.Long@noaa.gov, 206-526-4792; or Carrie Upite, NMFS Greater Atlantic Region, Carrie.Upite@noaa.gov, 978-282-8475.

SUPPLEMENTARY INFORMATION:**Background**

This final rule amends: (1) The BDTRP and its implementing regulations at 50 CFR 229.2, 229.3, and 229.35 in accordance with section 118(f) of the MMPA; and (2) current definitions and regulations issued under the ESA for sea turtle conservation at 50 CFR 222.102, 223.205, and 223.206 (d)(10). The BDTRP was originally published on April 26, 2006, and was amended on December 19, 2008, and July 31, 2012. NMFS is further amending the BDTRP to meet its MMPA-mandated goal of reducing incidental mortality and serious injury of strategic stocks of bottlenose dolphin from the Virginia pound net fishery. Regulations for this amendment are based on the BDTRT's consensus recommendations, which are generally consistent with existing regulations enacted under the ESA for sea turtle conservation, with some revisions and updates. Therefore, amendments to the ESA sea turtle conservation regulations for the Virginia pound net fishery are finalized within the same rulemaking for consistency in definitions and regulations.

Details regarding the development and justification of this final rule were provided in the preamble of the proposed rule (79 FR 21695; April 17, 2014) and are not repeated here.

Virginia Pound Net Fishing Requirements

This final rule requires the year-round use of modified pound net leaders for offshore Virginia pound nets within the Bottlenose Dolphin Pound Net Regulated Area. It removes the land-based inspection program for modified pound net leaders under the ESA. Instead, under both the MMPA and

ESA, it requires fishermen to attend a one-time compliance training before setting modified pound net leaders and to keep on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS. The rule also requires that all three sections of pound net gear (leader, heart, and pound) be fished at the same time with the exception of a continuous 10-day period to deploy, remove, and/or repair gear. Virginia pound net-related definitions are added for effective implementation of the regulatory measures, including hard lay lines, modified pound net leader, nearshore pound net, offshore pound net, and pound net. Lastly, non-regulatory measures are finalized under the BDTRP including outreach and coordination to help with compliance and monitoring of regulatory measures for the Virginia pound net fishery.

Comments on the Proposed Rule and Responses

NMFS received five comment letters on the proposed rule via email or www.regulations.gov. One comment letter was received from multiple organizations, including The Humane Society of the United States, Whale and Dolphin Conservation, Oceana, and Center for Biological Diversity. Other comment letters were received from the Marine Mammal Commission, one Virginia pound net fisherman, and two citizens. The comments are summarized below under Regulatory or Non-Regulatory Changes. NMFS' response follows each comment.

Comments on Regulatory Changes

Comment 1: Four comment letters, including one from multiple environmental organizations, expressed general support for the proposed rule and recommended NMFS adopt the measures as proposed.

Response: We appreciate the commenters' support, and we are finalizing these measures as proposed.

Comment 2: One comment letter from multiple environmental organizations expressed concern over the delay from when the BDTRT's consensus recommendations were received in September 2009 to when NMFS published the proposed rule. The letter references requirements in section 118(f)(7)(B)(i) of the MMPA that publication of proposed take reduction plans and amendments must occur no later than 60 days after the take reduction team submits them to NMFS. The letter also expressed concern that this delay needlessly delayed conservation measures meant to protect bottlenose dolphins.

Response: We acknowledge and regret the extensive delay from the time when the BDTRT provided us with their recommendations to when the proposed rule was published. There were many unforeseen factors that contributed to the delay. However, some important conservation benefits were immediately provided for protected species despite the delay.

Immediately following the September 2009 BDTRT meeting and as recommended by the Team, we sent the Virginia Marine Resources Commission (VMRC) a letter with the BDTRT's recommendations to reduce bottlenose dolphin serious injury and mortality from the Virginia pound net fishery. After receiving our letter, the VMRC promptly held public hearings and related meetings to discuss similar state regulations for the fishery. We sent the VMRC a follow-up comment letter supporting their actions and requested they adopt the BDTRT's recommendations. The VMRC subsequently enacted two regulations on December 18, 2009 and July 16, 2010 for the pound net fishery based in part on the BDTRT's recommendations. Importantly, the regulation issued in December 2009 required fishermen using offshore pound nets in the Virginia tidal waters east of the Chesapeake Bay Bridge Tunnel to use a modified leader year-round. This includes the area in the southern portion of Chesapeake Bay near Lynnhaven Inlet where the majority (77%) of dolphin entanglements in pound net leaders were documented. The state regulation issued in July 2010 required fishermen using offshore nets in the sea turtle Pound Net Regulated Area I to use modified leaders from May 6 through July 31. This provided an additional two weeks of conservation benefits in this area than were required at the time under the ESA sea turtle conservation regulations. Bottlenose dolphin stranding data confirm a conservation benefit to dolphins from the enactment of these state regulations. When comparing stranding data for the two-years immediately before (2008–2009) and after (2010–2011) the state's 2010 regulations, there was a 64% decrease in the total average annual number of bottlenose dolphin interactions with pound nets in the regulated waters. Additional regulations are still needed however to help ensure pound net entanglements do not cause mortality or serious injury of bottlenose dolphins to exceed the Potential Biological Removal (PBR) level for affected stock(s), especially the

Northern North Carolina Estuarine System Stock.

Comment 3: One comment letter from multiple environmental organizations stated that the BDTRP is not meeting its MMPA-mandated goals for take reduction plans because mortality and serious injury levels of some stocks of bottlenose dolphins exceeds PBR levels and greatly exceeds the long-term goal. Amending the BDTRP with the proposed Virginia pound net regulations was stated as a minimally needed step in achieving required goals. Furthermore, this amendment was viewed as especially important given the Unusual Mortality Event declared for the Atlantic United States' coast in July 2013, currently resulting in the loss of over 1,300 bottlenose dolphins, of which the greatest losses have occurred in Virginia.

Response: We agree that this amendment is necessary to further reduce bottlenose dolphin serious injury and mortality for Virginia pound net gear and to help the BDTRP meet its required goals. We recognize there are some stocks of bottlenose dolphins from which mortality and serious injury from commercial fishing gear is likely exceeding that stock's PBR. As required by the MMPA, we are continuing to monitor the implementation of the BDTRP and will convene the BDTRT as needed to develop recommendations to help further reduce mortality and serious injury of dolphin stock(s). Within the past year, we convened the BDTRT three times to provide us with recommendations for reducing mortality and serious injury to bottlenose dolphins from commercial gillnet gear in North Carolina specifically, and the North Carolina Division of Marine Fisheries has implemented all of the BDTRT's regulatory recommendations from each of these meetings. These regulatory measures in North Carolina also provide conservation benefit to some of the same stocks affected by Virginia pound net gear. We will continue to implement the BDTRT's recommendations, as resources allow, to help meet required goals.

Comment 4: One pound net fisherman expressed concern about the need to change their offshore pound net leader(s) from a traditional to a modified leader and claimed a loss of \$30–40,000 from this change.

Response: We acknowledge that any fisherman who has to modify pound net leaders as a result of this rule will incur additional operating costs if replacement gear is required. We calculated the one-time initial cost to change an offshore pound net leader from a traditional to a modified leader

as \$7,068 per leader. Because nets need to be routinely replaced due to normal use, the subsequent increase in costs would be equal to the difference in cost between a traditional and a modified leader, or \$1,650. The economic analysis provided in the proposed rule concluded that all entities expected to be directly affected by this rule were expected to already use modified leaders in these areas even if not required during certain times of the year because: (1) Of the added expense in maintaining both leader types and switching out the gear when modified leaders were not required; and (2) absence of demonstrated differences in harvest rates between nets using traditional versus modified leaders to offset the added gear costs. As stated earlier, all identified entities expected to be directly affected by this rule are expected to currently possess modified leaders and increased gear costs were not identified in the comment as a contributor to the estimated loss of \$30,000 to \$40,000. Therefore, if the comment refers to anticipated losses other than from harvest reductions, specific gear-related increased costs would be limited to permanently changing leaders and not the purchase of new leaders. We acknowledge that, despite research findings showing no significant differences between catch from traditional versus modified leaders, this result may not apply to all fishermen who have different fishing preferences, skills, and behaviors. Although this loss may be consistent with the experience of this fisherman, it would be inconsistent with the best scientific information available. Therefore, we believe these effects are overstated and would also not be expected to accrue to other fishermen.

Comments on Non-Regulatory Changes

Comment 5: One commenter recommended NMFS continue to monitor for evidence of protected species bycatch in Virginia pound net leaders to evaluate the effectiveness of the rule once it is implemented.

Response: We agree, and will continue to monitor protected species entanglement and stranding data to assess the effectiveness of the rule at reducing sea turtle and bottlenose dolphin interactions with Virginia pound net gear. We will also monitor entanglement and stranding data to assess whether additional amendments to the BDTRP or sea turtle conservation regulations are needed.

Comment 6: One commenter raised concerns that enforcement of the proposed regulations would be difficult without: (1) Including specific

information on how violations of the regulations would be assessed; and (2) requesting additional funding to support collaborative on-water enforcement.

Response: We agree that enforcement of regulations is important. However, we do not include specific details in regulations, such as how violations will be assessed, because the MMPA and ESA have statutory and regulatory requirements for establishing appropriate penalties. Federal agents and State officers authorized under Cooperative Enforcement Agreements monitor compliance and investigate potential violations of the statutes and regulations enforced by NOAA. In general, when an investigating agent or officer identifies a statutory or regulatory violation, they may pursue one of several available options, depending on the nature and seriousness of the violation. We often rely on partnerships with State officers to assist in enforcing regulations, such as with this regulation and the collaborative on-water monitoring and enforcement with the state of Virginia discussed in the proposed rule. When fiscal year budget appropriations are provided, we carefully consider all program and management needs to prioritize potential funding available to support enforcement-related needs.

Comment 7: One commenter expressed that NMFS should collaborate with commercial fishermen affected by these regulations and marine mammal experts.

Response: We agree, and included on the BDTRT are Virginia pound net and other commercial fishermen, as well as experts in the conservation or biology of marine mammal species as required under section 118(f)(6)(C) of the MMPA. The BDTRT provided us with consensus recommendations to reduce mortality and serious injury of dolphins from Virginia pound net gear. This regulation is based on their recommendations.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. One comment was received regarding the expected economic effects of the proposed rule. This comment is addressed in the comments and

response section of this final rule. The comment stated that this rule would have a larger economic effect on the fishing operation of the commenter than described in the proposed rule. No other comments were received that challenged the economic analysis provided, and the information provided in the comment is inconsistent with the best scientific information available regarding the catch efficiency of pound net gear using different leaders.

Although not an issue raised through public comment, subsequent to publication of the proposed rule, NMFS reconsidered its analysis with respect to the appropriate universe of affected entities. In the proposed rule, NMFS identified 16 entities upon which the proposed rule would directly apply, or less than one percent of the estimated 3,000 licensed commercial finfish fishermen in Virginia. The basis for consideration of the 16 entities within the context of the 3,000 licensed fishermen was consideration that the 16 entities use multiple gears in addition to pound nets to harvest saltwater species and the species they harvested with their pound nets are also commonly, and for some species primarily, harvested by other fishermen within the 3,000 licensed fishermen, who also fish with multiple gears. As a result, in the original analysis, these 16 entities were considered part of the general commercial finfish industry and not sufficiently distinct to be considered a separate industry. Even if NMFS considered this component to be a distinct fishing sector and, as a result, this rule would be expected to directly apply to 100 percent of the entities in the sector, the outcome would be the same, because of the absence of expected adverse economic effects on these entities. As noted in the proposed rule, all fishermen using an offshore pound net are expected to already be using the modified pound net leaders required by this final rule for three main reasons: (1) The modified pound net leaders are currently required year-round or seasonally within the BDPNRA by state or federal regulations; (2) research on the catch efficiency of modified pound net leaders within the BDPNRA showed no significant differences in harvest weight for the species analyzed when compared to using traditional leaders; and (3) incurring the costs associated with maintaining two types of leaders and switching the gear when modified leaders were not required by either current state or federal regulations would not make rational economic sense given the absence of

improvements in catch efficiency. Traditional leaders installed on offshore pound nets were calculated to cost \$5,418 to make and install/remove. Maintaining and using both types of leaders (*i.e.*, traditional and modified) would require expenditure of this cost, in addition to the cost of making a modified leader, as well as labor costs of switching leaders. If harvest and revenue is not increased by switching to the traditional leader, as demonstrated by available research, then bearing these additional gear and labor costs would be unjustified. Thus, even though this final rule will require the use of modified pound net leaders on offshore pound nets year-round in the BDPRNA, all fishermen who will be potentially affected are expected to currently use modified leaders when using pound nets in this area. Additionally, no fisherman who may have previously switched leaders over the course of the year, as suggested by the one public comment, is expected to incur significant adverse economic effects because switching leaders will no longer be allowed as a result of this final rule. Therefore, the available information is sufficient to support a certification that this rule will not have a significant adverse economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

NMFS determined this action is consistent to the maximum extent practicable with the enforceable policies of the Virginia Coastal Zone Management Program. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act on April 17, 2014. The Commonwealth of Virginia concurred with the consistency determination in a letter dated May 8, 2014.

This action contains policies with federalism implications that were sufficient to warrant preparation of a federalism summary impact statement under Executive Order 13132 and a federalism consultation with officials in the Commonwealth of Virginia. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate officials in Virginia. The Commonwealth of Virginia did not respond.

The final rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act. The sea turtle conservation regulations have a current Paperwork Reduction Act collection requirement in place (OMB control number 0648-0559) for the

inspection program. This final rule removes that collection of information requirement.

List of Subjects

50 CFR Part 222

Endangered and threatened species, Exports, and Reporting and recordkeeping requirements.

50 CFR Part 223

Endangered and threatened species, Exports, and Transportation.

50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and record keeping requirements.

Dated: February 3, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 222, 223, and 229 are amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

■ 1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*

■ 2. In § 222.102:

- A. The definition for “Hard lay lines” is added in alphabetical order;
- B. The definition for “Modified pound net leader” is revised;
- C. The definitions for “Nearshore pound net leader or nearshore pound net”, “Offshore pound net leader or offshore pound net”, and “Pound net” are added in alphabetical order; and
- D. The definitions for “Pound net leader,” “Pound Net Regulated Area I,” and “Pound Net Regulated Area II” are revised.

The additions and revisions read as follows:

§ 222.102 Definitions.

* * * * *

Hard lay lines mean 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 leader or 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 leader or 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; and
- (3) A leader, which is a long, straight element consisting of mesh or vertical lines that directs the fish offshore towards the pound.

Pound net leader means a long straight net that directs fish offshore towards the pound, an enclosure that captures the fish. Some pound net leaders are all mesh, while others have stringers and mesh. Stringers, also known as vertical lines, are spaced a regular distance apart and are not crossed by other lines to form mesh.

Pound Net Regulated Area I means Virginia waters of the mainstem Chesapeake Bay and the portion of the James River seaward of the Hampton Roads Bridge Tunnel (Interstate Highway-64) and the York River seaward of the Coleman Memorial Bridge (Route 17), bounded to the south and east by the Chesapeake Bay Bridge Tunnel (Route 13; extending from

approximately 37°07' N. lat., 75°58' W. long. to 36°55' N. lat., 76°08' W. long.), and to the north by the following points connected by straight lines and 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.

Pound Net Regulated Area II means Virginia waters of the Chesapeake Bay outside of Pound Net Regulated Area I, bounded by the Maryland-Virginia State line to the north and by the COLREGS line at the mouth of the Chesapeake Bay and 37°07' N. lat. between Kiptopeke and Smith Island, Northampton County, Virginia to the south and east. This area includes the Great Wicomico River seaward of the Jessie Dupont Memorial Highway Bridge (Route 200), the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3), the Piankatank River downstream of the Route 3 Bridge, and all other tributaries within these boundaries.

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PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 4. In § 223.205, paragraphs (b)(17) through (b)(20) are revised to read as follows:

§ 223.205 Sea turtles.

* * * * *

(b) * * *

(17) Set, fish with, or fail to remove a modified pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II defined in 50 CFR 222.102 and referenced in 50 CFR 223.206(d)(10) at any time from May 6 through July 15 unless the pound net licensee and the vessel operator meet the modified pound net leader compliance training requirements in accordance with § 223.206(d)(10)(vii).

(18) Alter or replace any portion of a modified pound net leader so that the

altered or replaced portion no longer meets the modified pound net leader definition in 50 CFR 222.102, unless that alteration or replacement occurs outside the regulated period of May 6 through July 15.

(19) Set, fish with, or fail to remove a modified pound net leader at any time from May 6 through July 15 in Pound Net Regulated Area I or Pound Net Regulated Area II unless the fisherman has on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS.

(20) Set, fish with, or fail to remove pound net gear in Pound Net Regulated Area I or Pound Net Regulated Area II, unless it has the all three continuous sections as defined in 50 CFR 222.102, except 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.

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■ 5. In § 223.206, paragraph (d)(10)(vii) is revised to read as follows:

§ 223.206 Exemptions to prohibitions relating to sea turtles.

* * * * *

- (d) * * *
- (10) * * *

(vii) Modified pound net leader compliance training. Any pound net licensee and any vessel operator who have modified pound net leaders set in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from May 6 through July 15 must have completed modified pound net leader compliance training and possess on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS. NMFS retains discretion to provide exemptions in limited circumstances where appropriate. Notice will be given by NMFS announcing the times and locations of modified pound net leader compliance training.

* * * * *

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 6. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*; § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

■ 7. In § 229.2, the definitions “Hard lay lines,” “Modified pound net leader,” “Nearshore pound net,” “Offshore pound net,” and “Pound net” are added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Hard lay lines mean 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; and
- (3) A leader, which is a long, straight element consisting of mesh or vertical lines that directs the fish offshore towards the pound.

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■ 8. In § 229.3 paragraph (s) is revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(s) *General Bottlenose Dolphin Take Reduction Plan.* (1) It is prohibited to set, fish with, or possess on board a vessel unless stowed, or fail to remove, any gillnet or pound net from the waters specified in § 229.35(c) unless the gear complies with the specified restrictions set forth in § 229.35(d).

(2) It is prohibited to set, fish with, or fail to remove a modified pound net leader in the Bottlenose Dolphin Pound Net Regulated Area unless the fisherman has on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS.

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■ 9. In § 229.35 paragraphs (a) and (c) are revised, a definition for “Bottlenose Dolphin Pound Net Regulated Area” is added to paragraph (b), and paragraph (d)(2)(ii) is added to read as follows:

§ 229.35 Bottlenose Dolphin Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Bottlenose Dolphin Take Reduction Plan (BDTRP) to reduce incidental mortality and serious injury of strategic stocks of bottlenose dolphins within the Western North Atlantic coastal morphotype in specific Category I and II commercial fisheries from New Jersey through Florida. Specific Category I and II commercial fisheries within the scope of the BDTRP are identified and updated in the annual List of Fisheries. Gear restricted by this section includes small, medium, and large mesh gillnets and pound nets. The geographic scope of the BDTRP is all tidal and marine waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras, southward to, and including the east coast of Florida down to the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

(b) * * *

Bottlenose Dolphin Pound Net Regulated Area 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.

* * * * *

(c) *BDTRP Regulated Waters*—(1) *Gillnets*. The regulations pertaining to gillnets in this section apply to New Jersey, Delaware, and Maryland State waters; Northern North Carolina State waters; Northern Virginia State waters; South Carolina, Georgia, and Florida waters; Southern North Carolina State waters; and Southern Virginia State waters as defined in § 229.35(b), except

for the waters identified in § 229.34(a)(2), with the following modification and addition. From Chincoteague to Ship Shoal Inlet in Virginia (37° 52' N. 75° 24.30' W. to 37° 11.90' N. 75° 48.30' W) and South Carolina, Georgia, and Florida waters, those waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 are excluded from the regulations.

(2) *Pound nets*. The regulations pertaining to pound nets in this section apply to the Bottlenose Dolphin Pound Net Regulated Area.

(d) * * *

(2) * * *

(ii) *Pound nets*. (A) Year-round, any offshore pound net in the Bottlenose Dolphin Pound Net Regulated Area must use a modified pound net leader.

(B) Year-round, any nearshore and offshore pound nets set in the Bottlenose Dolphin Pound Net Regulated Area must have all three continuous sections as defined in 50 CFR 229.2, except 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.

(C) The pound net licensee and the vessel operator of any offshore pound net set in the Bottlenose Dolphin Pound Net Regulated Area must have completed modified pound net leader compliance training and possess on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS. NMFS retains discretion to provide exemptions in limited circumstances where appropriate. Notice will be given by NMFS announcing the times and locations of modified pound net leader compliance training.

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