

# The Law of the Turtle

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Credit: Theophilos Papadopoulos

## Background

A turtle is unlike anything else. It has legs and a shell, and it gets along in almost every habitat, except extreme cold, and nobody blames it for that. The term turtle, despite what your neighbor might tell you, can mean shelled creatures living on land and sea, although some land turtles are further distinguished by being called tortoises and some aquatic (or semi-aquatic) turtles are called terrapins. They are all reptiles, although sea turtles (loggerhead, leatherback, green turtle, hawksbill, Kemp's ridley, olive ridley, and flatback) spend most of their lives swimming, while desert tortoises, for example, spend most of their lives far from water bodies.

A turtle shell is more properly called carapace for the top part, plastron for underneath. The divisions on the carapace are called scutes. Like the boat part of the same name, the keel is the ridge that runs vertically along the top of the carapace

in many species. Turtles keep their shells for their lifetime. It is not an exoskeleton; they still have a skeletal system.

Turtles have natural predators, and they are at the most risk when they are small. Their biggest threat is from humans. Some of the threats to sea turtles include being caught in fishing gear, having their beach nesting sites eliminated by development, and dying from trash in the ocean. Land turtles risk being sold for pets, getting killed by cats, being shot for target practice, and being killed by habitat change – such as from pollution or damming rivers.

A raft of laws protects turtles from human threats. Federal laws run the gamut of limiting sale of turtles to requiring certain shrimping vessels to use devices to allow sea turtles to escape from nets. State laws describe rules on capturing and keeping turtles for personal and commercial use, including which turtles are so at risk of extinction that no capture is allowed.

### Alabama Law

Both Alabama and Mississippi allow people to catch turtles that are not federally or state protected. Turtles that are not protected species fall into the category of nongame wildlife.

Alabama turtle regulations use terms seldom found elsewhere, like “turtle farmer” and “nuisance turtle.” A turtle farmer needs a license to raise turtles for sale – as pets or food. A nuisance turtle is not doing anything different than a regular turtle but is called a nuisance when it interferes with humans fishing. Turtles tend to cluster around fish feeders in aquaculture ponds, or grab lines stealing bait meant for fish, but overall, they do not harm fish, and they improve the quality of the water body they call home. And so it is a crime in Alabama for anybody other than a permitted turtle farmer to take a nuisance turtle, no matter how annoying.

The state limits the number of turtles a person can catch for personal purposes to two a day. However, the turtles may not be trapped. They can be captured only by hand, dip net or hook and line. Breaking these rules can lead to a \$100 fine. Additionally, certain turtles may not be captured in any quantity. Those are:

- Diamondback terrapin
- Gopher tortoise
- Alabama red-bellied turtle
- All map turtles
- Flattened musk turtle
- Alligator snapping turtle
- Razor-backed musk turtle
- Any turtle protected under federal law.<sup>1</sup>

The flattened musk turtle, endemic to Alabama (meaning it is found only there), demonstrates it is good to have friends in high places. What makes the flattened musk turtle special is that it has its own state law imposing a \$5,000 fine for harming it.<sup>2</sup> The state fine is 50 times higher for taking a flattened musk turtle than for taking any other nongame turtles. It is also protected under the federal Endangered Species Act.

The nongame list of protected reptiles does not include sea turtles, but Alabama state law still prohibits their capture. Alabama has separate rules for what they call “marine or salt water turtles.”<sup>3</sup> It is illegal to “take, catch, molest or [possess]” sea turtles. The penalty under state law is \$100.

### Mississippi Law

The Mississippi regulatory structure is similar to Alabama’s except it puts more limits on the number of turtles people may take or possess, and it has larger fines. Under Mississippi wildlife regulations turtles fall into the category of nongame species in need of management. The names of Mississippi nongame turtles do not disappoint. The list includes the chicken turtle and the stinkpot. In general, only licensed hunters or fishers may catch nongame turtles for personal use, and there are limits on quantity depending on species. For example, only one alligator snapping turtle per person. Turtles may not be taken to be sold or traded, or raised for sale.

Catching or possessing turtles that do not fall into the category of nongame species in need of management, requires a permit in Mississippi. Those turtles include four sea turtles: green, hawksbill, Kemp’s/Atlantic ridley, and leatherback; three map turtles: yellow-blotched, black-knobbed, and ringed; the Alabama red-belly turtle; and the gopher tortoise.

For any violations of the laws protecting nongame in need of management turtles (i.e. not the protected turtles), there is a \$2,000-\$5,000 fine, with an optional additional fine of \$100 per turtle.<sup>4</sup>

### Federal Law Protecting Turtles at Risk of Extinction

The federal Endangered Species Act (ESA) protects all sea turtles found in Alabama and Mississippi waters and shores. Additionally, the ESA protects four other turtles found in Mississippi and Alabama (T means threatened, and E, endangered): yellow-blotched map turtle (T); ringed map turtle (T); Alabama red-bellied turtle (E); and flattened musk turtle (T).

Under the ESA it is illegal to catch, harm, sell, possess, harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to do any of those things with any endangered species. These actions are referred to as “takes” in ESA-talk. A knowing violation can lead to a criminal penalty of up to \$100,000.<sup>5</sup> By “knowing,” the law does not mean that the person knows that a particular turtle was a protected species before stomping on its eggs, for example, but that the person knew he was stomping on eggs.

In addition, the ESA makes it illegal to harm the habitat of a listed species if that damage disturbs the eating, mating, or nesting habits of the species. Also,

federal agencies must consider alternatives to programs and actions that would adversely affect designated critical habitat of listed species.

Threatened species, which include green and loggerhead sea turtles in the Gulf of Mexico, are protected to the same extent as endangered species unless a special rule is put in place. For example, there is a Special Rule for green sea turtles in the Gulf. Under that rule it is not considered a “take” of a green turtle if it is incidentally caught in fishing gear,<sup>6</sup> meaning while fishing for something else a turtle is caught by accident. There are no special rules for loggerhead sea turtles or any of the listed land turtles in Alabama and Mississippi.

### **Federal Law Limiting Incidental Sea Turtle Capture**

As mentioned above, sea turtles are federally protected under the ESA, which makes injuring or killing them illegal, even if done without intending to hurt them. When fishing catches animals other than what was being fished for, it is known as bycatch. The Magnuson-Stevens Fishery Conservation and Management Act (the Magnuson-Stevens Act) requires regional fisheries to establish a bycatch reduction program.<sup>7</sup> Fishery Management Plans developed by eight regional councils around the United States consider bycatch reduction for each fishery. While the amount of bycatch is hotly debated, longline fisheries contribute to sea turtle deaths. According to one study, those rates could be reduced two to three times by the use of a circle hook rather than a J-hook (which refers to the shape of the hook).<sup>8</sup> And turtle bycatch is even lower when fish bait, rather than squid, is used to lure the intended fish. Rates of captured loggerhead dropped by 55 percent and for leatherbacks 64 percent when both techniques are used, according to that study.

### **Specific Federal Rules for the Gulf of Mexico**

The Magnuson-Stevens Act regulations limit where pelagic longline gear may be used in certain parts of the Gulf when sea turtles come ashore to lay their eggs, from April 1 through May 31. They also require use of circle hooks.<sup>9</sup> Additionally, vessels with pelagic or bottom line gear must have on board the National Marine Fisheries Service (NMFS) document: “Careful Release Protocols for Sea Turtle Release with Minimal Injury.”<sup>10</sup> When a sea turtle is snagged on a longline, the vessel must retrieve the gear and move at least 2 km away.

The Gulf of Mexico Fishery Management Council addressed sea turtle protection in 2018 when it revised the Fishery Management Plan (FMP) for reef fish, which include red snapper. FMPs are reviewed under the ESA to see if they are likely to jeopardize the continued existence of listed species, such as sea turtles. This review results in a Biological Opinion (BiOp) assessing the risk to the species by the proposed federal plan. In 2005 a BiOp was issued for the reef fish FMP, finding that sea turtles are incidentally caught in the lines while reef fishing, but that the FMP did not jeopardize the continued existence of any sea turtle species. The BiOp included measures for the fishery to take to increase survival rates of sea turtles.

Accordingly, the FMP requires specialized gear to limit the harm to turtles caught by accident. Those measures were updated in 2008, 2010, and 2018. The 2018 changes include using a collapsible hoop net, dehooking device, and small turtle hoist, and they required pliers of at least 11” to release hooked sea turtles. The hoop net is used to haul aboard turtles that are caught on the lines so that the fishing gear can be removed from the turtle on deck. Some of the more surprising additional gear for vessels using longlines include a tire to rest any snagged turtle on while the hook is extracted and two sturdy nylon dog bones to keep the turtle’s mouth open.<sup>11</sup> When an injured turtle is “boated,” among other procedures, fishers must attempt resuscitation for 4-24 hours.<sup>12</sup>

Longline fisheries are not the only fishery posing a risk of sea turtle bycatch. Turtle Excluder Devices, or TEDs, are required for shrimp trawlers in the Gulf of Mexico (and the South Atlantic) as part of the ESA incidental take provisions. A TED is a cage-like structure fitted midway in a shrimp net, allowing large creatures to push out, but the shrimp to pass into the net.<sup>13</sup> Under the rules, any shrimp trawler must have a TED in any net “rigged for fishing,” basically meaning extra nets sitting on the boat do not need a TED installed.<sup>14</sup> There are some exceptions for shrimp trawlers depending on their size and gear.

### **Federal Law Limiting Turtle Sales, Internationally**

Many more turtle species are protected under an international treaty than are listed under the ESA, however the protections for those turtles are limited. The international treaty, the Convention on International

Trade in Endangered Species of Fauna and Flora (CITES, pronounced sigh-tease), limits trade of listed species. The treaty is intended to protect species whose survival is threatened by commerce, such as elephants. The 178 member countries to CITES may list species within their countries that are harmed by trade. The United States, through the Fish and Wildlife Service (FWS), has listed dozens of turtle species for which commerce is banned, primarily due to risks from the pet trade.<sup>15</sup>

While that stops poachers from grabbing turtles, CITES does not address habitat protection. Therefore, although CITES forbids a developer from catching a desert tortoise to sell, the treaty does not prohibit killing the turtles. (Whether that's a violation of other laws is another matter.)

### Federal Law Limiting Turtle Sales, Domestically

Other federal restrictions apply to turtles, even if they are not listed under the ESA. In 1975 Congress passed a law regulating turtle sales, putting the U.S. Food and Drug Administration in charge. The law was aimed at reducing salmonella, a disease that turtles can carry. As recently as January 2020, the Centers for Disease Control (CDC) linked contact with pet turtles to salmonella in 26 people in 14 states. One bit of advice from the CDC: "Don't kiss or snuggle turtles."

In terms of legal restrictions, the federal regulations prohibit selling or distributing turtle eggs or small live turtles (with shells smaller than 4") within the United States.<sup>16</sup> The size restriction is based on what the government thinks is too big for a turtle to fit in children's mouths, but the guidance notes that turtles bigger than 4" (which is almost all of them at maturity) still can carry salmonella. Online searches for small turtles lead to websites selling turtles, despite this law.

This law does not make it legal to sell *any* turtle bigger than 4 inches. It applies only to those turtles for which sales are not against the law. Thus, a turtle farmer cannot sell an Alabama red-bellied turtle no matter how big.

The most common pet turtle is the red-eared slider, a native to Mississippi and Alabama. Because sliders can get to 16" long, pet owners often let them loose when they have outgrown their cuteness, and now red-eared sliders are on a list of international invasive species. In comic books they are heroes: four red-eared sliders became the Teenage Mutant Ninja Turtles. These turtles live 4-6 months as a pet, on average, but 20-30 years in the wild.<sup>17</sup>

### Conclusion

Admire from a distance might be the lesson of the Law of the Turtle. Turtles come in many shells, many sizes, and many locales, but one thing they all have in common is being at risk of human-caused harm. Some harm is intentional, such as folks selling turtles for pets or food, but much of it is incidental to other activities, like catching turtles in fishing gear. The laws are designed to curb human damage so that turtles can thrive. 🐢

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### Endnotes

1. Ala. Admin. Code r. 220-2-.92(c), (f).
2. Ala. Code Ann. § 9-11-269.
3. Ala. Admin. Code r. 220-2-3-33.
4. Miss. Code Ann. § 49-7-141.
5. 16 U.S.C. § 1540(b) indicates that the maximum criminal penalty for an ESA violation is \$50,000. But under the Alternative Fines Act, a knowing violation of the ESA is a Class A misdemeanor when it is punishable by up to a year in jail (18 U.S.C. § 3559), and accordingly, the criminal penalty is adjusted to a maximum of \$100,000 (18 U.S.C. § 3571).
6. 50 C.F.R. § 17.42(b)(1)(v).
7. 16 U.S.C. § 1865.
8. Yonat Swimmer, et al., *Sea Turtle Bycatch Mitigation in U.S. Longline Fisheries*, *Frontiers in Marine Science* (Aug. 25, 2017).
9. 16 U.S.C. § 635.21(c)(5)(iii)(B).
10. 50 C.F.R. § 635.21(b)(1).
11. 50 C.F.R. § 635.21(c)(5).
12. 50 C.F.R. § 635(c)(5)(ii)(B).
13. For more on TEDs, see Ryan Bradley, *A Fishbeye Perspective on Bycatch Reduction Devices in the Gulf of Mexico Shrimp Fishery*, *Water Log* (Sept. 2019).
14. 50 C.F.R. § 223.206(d)(2)(i).
15. The turtles listed under CITES in addition to sea turtles are: alligator snapper, common snapper, southern painted, chicken, common map, Pascagoula map, pearl map, Mississippi map, Alabama map, Ouachita map, diamondback terrapin, river cooter, Carolina box, red-eared slider, eastern mud, razorback musk, stripeneck musk, stinkpot, smooth softshell, and spiny softshell. See CITES, *Checklist of CITES Species*.
16. 21 C.F.R. § 1240.62.
17. 40 Fed. Reg. 22543 (May 23, 1975).