

Frequently Asked Questions
&
Legal Considerations
of
Senate Bill 825



“The Turtle Law”



N.C. Wildlife Resources Commission

www.ncwildlife.org

August 2003

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-100
SENATE BILL 825**

AN ACT TO AUTHORIZE THE WILDLIFE RESOURCES COMMISSION TO PROTECT CERTAIN REPTILES AND AMPHIBIANS THAT REQUIRE CONSERVATION MEASURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-333(a) is amended by adding a new subdivision to read:

"(6) To adopt and implement rules to limit, regulate, or prohibit the taking, possession, collection, transportation, purchase or sale of those species of wild animals in the classes Amphibia and Reptilia that do not meet the criteria for listing pursuant to G.S. 113-334 if the Commission determines that the species requires conservation measures in order to prevent the addition of the species to the protected animal lists pursuant to G.S. 113-334. This subdivision does not authorize the Commission to prohibit the taking of any species of the classes Amphibia and Reptilia solely to protect persons, property, or habitat; to prohibit possession by any person of four or fewer individual reptiles; or to prohibit possession by any person of 24 or fewer individual amphibians."

SECTION 2. The commercial taking of any turtle or terrapin within any of the species of turtles and terrapins in the families Emydidae and Trionychidae that are the large basking and sliding turtles and terrapins is prohibited until such time as the Wildlife Resources Commission adopts rules to regulate the taking of turtles or terrapins within these two families of reptiles. For the purposes of this section, "commercial taking" is defined as the taking, possession, collection, transportation, purchase or sale of five or more individual turtles or terrapins from either of the two families of reptiles described in this section. Any person who violates this section is guilty of a misdemeanor and is punishable as provided in G.S. 113-135. This section shall not apply to a licensed veterinarian; to a bona fide zoo operated by the federal government, the State, or a unit of local government; or to bona fide scientific, biological, medical, or veterinary education or research.

SECTION 3. Sections 1 and 3 of this act are effective when this act becomes law. Section 2 of this act becomes effective 1 July 2003 and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of May, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:11 a.m. this 31st day of May, 2003

Introduction: Section 1 of SB 825 gives the N.C. Wildlife Resources Commission the authority to enforce rules regarding amphibians and reptiles. Section 2 of SB 825 details the law that is in effect now regarding the two specific families of turtles: Emydidae and Trionychidae. Section 2 will remain the law until such time as the Commission creates new turtle rules (which Section 1 gave the Commission the authority to do).

According to Section 2, the commercial taking of more than four turtles from the families Emydidae and Trionychidae is prohibited until the Commission adopts rules to regulate their taking. The only persons/entities exempt from this prohibition are veterinarians, zoos and education and research institutions (as specified in Section 2). The penalty for violating this law is a Class 3 misdemeanor, which carries up to a \$200 fine.

Below are some questions regarding SB 825, its enforcement, and the future actions the Commission plans to take to improve compliance with this law.

Is the specified “four turtles from these protected families” a daily bag? No. It is NOT a daily bag. It is an absolute limit. Although not specifically written in the law, the Commission should handle this like a possession rule. Until the Commission writes a rule to replace Section 2, if a person is in possession of five or more turtles or has been witnessed taking, transporting, collecting, selling or purchasing five or more turtles, he/she is in violation of this law. Therefore, a person can take, possess, collect, transport, purchase or sell four turtles from these two families - for the remainder of that person’s life, until we adopt different rules.

Does this law apply to only live turtles, or are carcasses, turtle shells and quarters included? Since the law does not have language to the contrary, the law applies to both living and dead turtles from these two families. Turtle meat would probably be in quarters, so count the legs to determine the number taken. If an enforcement officer comes upon a pile of 150 cleaned carapaces, he/she has a violator. If someone is taking five or more protected turtles and if an enforcement officer can prove this in a court of law, the Commission will charge the person. If, however, someone has picked up a bunch of turtle shells that he/she found in the woods, he/she has not violated the law.

What about a farmer who wants to take turtles out of his pond because the turtles are eating his fish? Several of these protected species are vegetarians and do not eat fish. This question raises an issue of potential ambiguity in SB 825. According to SB 825, a farmer can take only four turtles from these two families until the Commission adopts rules to the contrary. However, nothing in this law overrides the depredation law, therefore most judges would probably not rule against the defendant for removing turtles in the act of depredation. The Commission can issue a depredation permit that would restrict the manner of removal so as to allow the spirit and letter of SB 825 to be maintained. Example: a permit that specifies turtles could be live-trapped then removed to a location specified by the Commission for release. If the permit could not be structured as to allow for compliance with SB 825, then it could not be issued.

What about people who have several pet turtles - with more than four of them being from the now-protected families? No one, except those specified at the bottom of Section 2 (veterinarians, zoos, education and research institutions) can possess more than four turtles from the protected families until the Commission adopts rules to the contrary. However, **it is imperative** to inform the public **NOT** to release any pet turtles into the wild for reasons of protecting our native wild turtles from introduced diseases, introduced non-native species, etc.

What about people who are target practicing with turtles basking on logs or swimming in ponds? Besides being an unethical waste of a valuable resource, this action is illegal if people take five or more turtles from these two families, unless the Commission adopts a rule to the contrary. It is important to remember that the limit is an absolute one - if a person shoots four turtles one day, he/she can **never** shoot another turtle again. Therefore, if an enforcement officer can prove that a person shot three turtles on one day, and two the following day, the officer can - and should - charge the offender. As long as someone shoots only four turtles, he/she would not be guilty of the cruelty to animals statute because the cruelty to animals statute clearly states that it does not apply to the lawful taking of animals under the jurisdiction of the Commission.

What about a fisherman with a crab pot who catches several Diamondback Terrapins? If a person has a lawful set, whether it be a crab pot, trot line, steel trap, etc., as long as the person releases the animal (regardless if it is dead or alive) and does not take it with him, then the person is not in violation.

What about the old rule that dealt with collection permits for reptiles and amphibians? This rule is in effect still, however the new turtle law requires that the Commission cannot give collection licenses to people who want to collect five or more turtles from these two families if it believes these people are not bona fide zoos, scientific and research institutions or veterinarians. Amphibian collection and the collection of other reptiles (snakes, lizards and turtles not in the two protected families) are regulated as stated in the collection rule (a license is required to collect five or more reptiles and/or 25 or more amphibians). Spotted turtles and listed species still are protected from all collection.

What about the fine for violators? Is this fine per offense or per turtle? This is a Class 3 misdemeanor and carries a fine of up to \$200 per offense, not per turtle.

Are there other rules and law that apply to these turtles? The Lacy Act still applies for interstate transport of wildlife. The USDA prohibits the sale of turtles under 4 inches, and state health laws prohibit the sale of turtles as pets. Enforcement officers with the Commission do not enforce the USDA or state health laws, however. Also, the possibility of out-of-state turtle collectors who may be subject to rules and laws in their respective states of residences and in states through which they transport turtles must be considered.

If someone has a valid collection license for turtles, should he/she also have a special device license? No. A special device license is not needed; this license applies only to fish.

Many of the questions in this handout raise issues that the Commission will be addressing soon with the writing of NCAC rules regarding these turtles (as it is authorized to do in Section 1 of the law). The Commission soon plans to propose an emergency rule that will deal with incidental take, depredation issues, and the allowance of five or more turtles from these families as pets. Most likely, the rule will set a replacement cost for illegal take of turtles from these two families. Since the law was written originally with the intent to prohibit large-scale (commercial) take of these turtles, the Commission plans to write rules that will be in keeping with the spirit of that law but that will not burden the average North Carolina citizen with overly-restrictive turtle regulations. When these rules are adopted, enforcement officers will be informed of the changes to the answers for the questions on this handout through the usual chain of command.