

**SUPPORTING STATEMENT
GEAR-MARKING REQUIREMENTS FOR
ATLANTIC LARGE WHALE TAKE REDUCTION PLAN
OMB CONTROL NO. 0648-0364**

A. JUSTIFICATION

This request is for a renewal of this information collection.

1. Explain the circumstances that make the collection of information necessary.

The Atlantic Large Whale Take Reduction Plan (ALWTRP) was developed under section 118 of the Marine Mammal Protection Act (MMPA) to reduce the mortality and serious injury (bycatch) of endangered North Atlantic right whales, humpback whales, and fin whales caught incidentally in U.S. fishing gear. Multiple commercial fisheries throughout the ranges (Maine to Florida) of these stocks are known to cause incidental mortality and serious injury at levels that exceed these stock's potential biological removal (PBR) levels. Under the MMPA, take reduction plans (TRP) are required to reduce, within six months of implementation, the incidental mortality and serious injury of marine mammals taken in the course of commercial fishing operations to levels below a stock's PBR. Within five years of implementation, TRP are required to reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans. For Northern right whales (right whales) PBR has been defined as zero.

In 1996, pursuant to section 118 of the MMPA, National Marine Fisheries Service (NMFS) established and convened an Atlantic Large Whale Take Reduction Team (ALWTRT) to assist in the development of the ALWTRP. During this process, the ALWTRT provided NMFS with recommended measures designed to reduce serious injury and mortality to right, humpback, and fin whales from incidental interactions with commercial fishing gear. To address the continued entanglement of large whales in commercial fishing gear, NMFS has reconvened the ALWTRT several times and has recently modified the ALWTRP (0648-AS01 (72FR57103), with amendments to 50CFR229, 50CFR635 and 50CFR648), to include additional measures to reduce serious injury and mortality from entanglement. One of these modifications requires marking fishing gear to collect important information on the type of gear involved in the incidental mortality and serious injury of entangled whales. Specifically, fishers are required to mark surface buoys to identify the vessel registration number, vessel documentation number, Federal permit number, or whatever positive identification marking is required by the vessel's home port state. All fisheries regulated by the ALWTRP are required to use the gear marking scheme of one or two 4" mark(s) midway along the buoy line. The Southeastern United States (U.S.) Atlantic shark gillnet fishery is required to mark only buoy lines greater than 4 ft (1.2 m) in length.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

Gear-marking requirements assist NMFS in obtaining detailed information about which fisheries or specific parts of fishing gear are responsible for the incidental mortality and serious injury of right, humpback, and fin whales. Generally, only a portion of gear is recovered from an entangled whale and it is almost impossible to link that portion of gear to a particular fishery. Therefore, requiring fishermen to mark surface buoys and the buoy line will provide NMFS with an additional source of information, which could then be used to determine the gear responsible for and the location of the entanglement event. Furthermore, information tracing incidental mortality and serious injury of marine mammals back to specific gear types, gear parts, locations, and fishermen assists NMFS and the ALWTRT in focusing future management measures on specific problem areas and issues, which may avoid unnecessarily regulating fisheries with overly broad measures. Gear marking will not reduce bycatch in and of itself, but is expected to facilitate monitoring of entanglement rates and assist in designing future bycatch reduction measures. The frequency of information use is primarily correlated with the occurrence of entangled whales and/or the recovery of entangled gear.

NMFS has implemented the gear-marking requirements in as simple a manner as possible and as compatibly with other state or federal fishery management plans and TRP as possible. NMFS developed the final gear-marking requirements with the assistance of its fishing industry liaisons, feedback from ALWTRT members, and public comments received on a proposed rule. Because fishery-related mortality has been difficult to determine and assess, gear-marking requirements may not only assist in obtaining valuable gear interaction information from future entanglement events, but may also be a useful tool for measuring compliance.

The information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with National Oceanic and Atmospheric Administration (NOAA) standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

There is no use of automated or electronic or other technological techniques associated with the gear-marking scheme.

4. Describe efforts to identify duplication.

Presently, gear marking (trap/pots, gillnets, and associated surface gear) is required under several Federal and state fishery management plans. NMFS's requirement complements existing Federal or state fishery management plans and TRP.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The gear marking requirements affect gillnet and trap/pot fisheries in various ALWTRP management areas in state and federal waters from Maine through Florida. The most recent information collection (2008) affected the following regulated fisheries: Cape Cod Bay Restricted Area lobster and gillnet fisheries; Great South Channel lobster and gillnet fisheries; Stellwagen Bank/Jeffreys Ledge Restricted Area lobster and gillnet fisheries; Northern Nearshore lobster fishery; Southern Nearshore lobster fishery; Offshore lobster fishery; Other Northeast gillnet fishery; Southeastern U.S. Atlantic Shark Gillnet fishery; Northern Inshore and Lobster Management Area (LMA) 6 lobster trap/pot fisheries; Atlantic blue crab trap/pot fisheries; Atlantic mixed species trap/pot fisheries targeting crab (red, Jonah, and rock), hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock, redfish, and white hake), conch/whelk, and shrimp; Northeast driftnet; Northeast anchored float gillnet; Mid/South-Atlantic gillnet; and Southeast Atlantic gillnet.

All these fisheries are composed almost entirely of small businesses. NMFS minimized the burden on fishermen by evaluating the existing state/federal gear-marking requirements and developing non-duplicative regulations that allows for the continued use of the previously required state and federal marking requirements without promulgating new requirements where they previously existed. For example, the majority of fishermen already marks their buoys with their vessel or permit number; therefore, NMFS assumes that this requirement placed no additional burden on fishermen.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

The current gear-marking requirements are designed to help NMFS improve the quality of information concerning the taking of endangered right, humpback, and fin whales incidental to commercial fishing operations. Specifically, information collected through gear marking assists NMFS and the ALWTRT identify the type of and general location of commercial fisheries that interact with federally protected marine mammals and may result in mortality and serious injury. Accordingly, this information will be used to tailor management measures to reduce the risk of mortality and serious injury of marine mammal incidentals to commercial fishing operations.

Without the information provided by the final gear-marking requirements regarding where entanglements occur and what type of gear is involved, future management measures may be overly broad and affect more individuals than necessary. Therefore, knowing which geographic areas and fisheries pose the greatest risk to large whales will minimize the economic impact to fishermen while maximizing the benefits for these species.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

There are no special circumstances that would require the collection of information to be conducted in a manner inconsistent with Office of Management and Budget (OMB) guidelines.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice published on October 9, 2008 (73 FR 59605) solicited public comment. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

There is no provision to provide any payment or gift to participants.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Information collected from the gear is considered confidential by NMFS, in accordance with Magnuson-Stevens Fishery Conservation and Management Act, Section 402b; 50 CFR 229.11, Confidential fisheries data; and NOAA Administrative Order 216-100 - Protection of Confidential Fisheries Statistics. The agency will not release this information in any format that could allow the public to identify any fisherman individually. Assurance of confidentiality was contained in initial outreach materials before the final rule implementing this collection became effective.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Not applicable.

12. Provide an estimate in hours of the burden of the collection of information.

The labor and materials burden associated with the gear marking requirements is based on the number of marks each vessel would need to install.

The methodology used to estimate labor and material costs is presented in Attachment A. This spreadsheet shows slightly higher costs for those vessels newly affected by the new 2007 gear marking requirements, as some of the newly affected vessels will still be in the process of completing their marking for all gear during 2009.

The average annualized number of required marks over all vessel classes is 28.8 (29), times an average of 5 minutes per mark, which results in 2.34 (2) hours per vessel.

The estimated number of vessels affected by the gear marking provisions is 4,270. The annualized number of responses is 122,848. The average annual hourly burden is 10,235.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

Over three years, the average reporting cost burden (for materials) for affected vessels is \$ 2.62 per year. The annual cost burden is estimated \$6,755.

14. Provide estimates of annualized cost to the Federal government.

These gear-marking requirements are not expected to have any annualized costs to the Federal government.

15. Explain the reasons for any program changes or adjustments.

There are adjustments both to burden and cost: a decrease in burden from 16,975 to 10, 235, a difference of 6,740 and a decrease in cost from \$11,203 to \$6,755, a difference of \$4,448. These decreases are because the first year of implementation of the new gear marking requirements approved in 2007 – in which higher burden and costs were incurred by new respondents' all having to mark their gear within the same short implementation period – has been completed. However, as some of the newly affected vessels are still in the process of completing their gear marking during the first few months after the implementation year, the burden and cost for these vessels is estimated to be slightly higher for 2009.

16. For collections whose results will be published, outline the plans for tabulation and publication.

There are no plans to publish the results of this collection per se. Information about gear and areas involved in entanglements might be published as part of some broader report or analysis, such as regularly published Marine Mammal Stock Assessment Reports. No information on the identity of individual fishers, if available, will be published. Any such broader report or analysis will be subject to quality control measures and pre-dissemination review pursuant to Section 515 of Public Law 106-554 prior to dissemination.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information does not employ statistical methods.

ATTACHMENT A: CONSOLIDATED BURDEN TABLE - GEAR-MARKING REQUIREMENTS FOR THE ATLANTIC LARGE WHALE TAKE REDUCTION PLAN (ALWTRP)

Table with 14 columns (A-N) and 1 row for headers. Headers include: A (Estimated Number of Affected Vessels), B (Number of Marks Per Model Vessel), C (Year 1 Responses), D (Annual Responses in Years 2 & 3), E (Responses in Years 2 & 3 Combined), F (TOTAL Responses Years 1-3 Combined), G (Year 1 Cost Burden), H (Annual Cost Burden in Years 2 & 3), I (Cost Burden in Years 2 & 3 Combined), J (TOTAL Cost Burden in Years 1-3 Combined), K (Year 1 Time Burden (hours)), L (Annual Time Burden in Years 2 & 3 (hours)), M (Time Burden in Years 2 & 3 Combined (hours)), N (TOTAL Time Burden in Years 1-3 Combined (hours)).

Estimated Burden for Vessels Newly Required to Mark Gear Under the ALWTRP

Main data table containing rows for Lobster, Gillnet, and OTP gear types. Each gear type has multiple rows of data corresponding to different vessel models and sizes, with values for responses, costs, and time burdens as defined in the headers.

Estimated Burden for Vessels Currently Required to Mark Gear under the ALWTRP

Main data table containing rows for Lobster Current and Gillnet Current gear types. Similar to the previous table, it lists vessel models and sizes with associated response, cost, and time burden values.

Summary table with 14 columns (A-N) and 3 rows: SUBTOTAL, Per Vessel Average, and TOTAL. It aggregates the data from the previous tables.

Notes: Sums and products may not total due to rounding. The Year 1 cost burden represents the immediate cost of marking all buoy lines, which is required within six months of publication of the rule. Years 2 and 3 represent the second and third years after the publication of the final rule.

Summary table with 4 columns and 3 rows. Headers: Annualized number of responses over three years (Column F divided by 3), Annualized number of rule-related hours over three years (Column N total divided by 3), Annualized number of rule-related recordkeeping costs over three years (Column J total divided by 3). Values: 162,837, 13,567, \$8,954. Additional values on the right: 40,908, 3,408, 16,975, \$6,755.