

SUPPORTING STATEMENT
Atlantic Large Whale Take Reduction Plan
OMB CONTROL NO. 0648-0364

A. JUSTIFICATION

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

This request is for revision of this information collection, in conjunction with Proposed Rule 0648-BC90.

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 stocks 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 0.8.

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 modified the ALWTRP in 2007 (0648-AS01 (72 FR 57104), 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 (with one or two marks) only buoy lines greater than 4 ft (1.2 m) in length.

NMFS is proposing to amend the gear marking requirements to increase the length and frequency of the required buoy line mark. This change will improve the information NMFS collects on entanglement events. The current gear marking strategy (implemented in 1997) is inadequate and should be improved. From 1997-2008 there were 364 large whale entanglement events. Gear was retrieved in 129 of these cases; of the cases where gear was retrieved, gear

marking led to 36 cases where fishery, location, and date were known. A stronger gear marking strategy would help answer questions such as when and where entanglements occur. Current regulations require one 4” colored mark midway along the buoy line and surface buoys to identify the vessel or fishery. Colors correspond to specific ALWTRP management areas.

The proposed gear marking scheme would maintain the current color combinations but increase the size and frequency of the mark. The new mark must equal 12” in length and buoy lines must be marked three times (top, middle, bottom).

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 provides 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 TRPs as possible. NMFS developed the final gear-marking requirements (72 FR 57104) with the assistance of its fishing industry liaisons, feedback from ALWTRT members, and public comments received on a proposed rule in 2005 (70 FR 35894). 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.

In an effort to further improve the information gained from entanglement events, NMFS is proposing to change the length and frequency of required marks.

Proposed measures were developed through discussions with the public and ALWTRT. Although the ALWTRT did not come to consensus on all of the items in the proposed rule, nor on any one suite of actions, all of the measures proposed in the preferred alternative (Alternative 5, Relocation) are within the scope of measures discussed by the Team. Potential measures include: expanding the gear marking scheme to require larger and more frequent marks along the buoy line; increasing the number of traps per trawl based on area fished and miles fished from shore in the northeast; establishing several closures in the northeast for trap/pot fisheries;

modifying weak link and breaking strength requirements of buoy lines; and requiring the use of one buoy line with one trap in the southeast.

The options differ based on the number of traps per trawl or closures proposed under each alternative. The gear marking scheme proposed in each alternative does not differ; however, the burden estimates may vary by alternative for two reasons: (1) differences in the number of affected vessels between alternatives and (2) differences in the number of buoy lines allowed per trawl for lobster and other trap/pot vessels. The alternatives were analyzed in two ways to account for varying fishing effort depending upon the behavior of industry as a result of the proposed closures. One way assumed 100% suspension of fishing effort as a result of Northeast trap/pot fishery closures and the other way assumed some vessels would relocate effort to fish outside the closed areas.

- Alternative 2 would implement new gear marking restrictions coastwide, increase the number of traps per trawl, require the use of weaker weak links and/or vertical lines of lower breaking strength. This alternative would also implement a new management area in the Southeast Region.
- Alternative 3 would implement all of the requirements of Alternative 2, except the number of traps per trawl required in Maine would differ. Under this alternative NMFS proposes a closure in the Cape Cod Bay from February 1 through April 30. In
- Alternative 4 would implement all of the requirements of Alternative 2. In addition, NMFS would propose three closures: (1) Jordan Basin from November 1 through January 31; (2) Jeffreys Ledge from October 1 through January 31; and (3) Cape Cod Bay (including a portion of the Outer Cape and abutting the Great South Channel) from January 1 through April 30.
- Alternative 5 is a combination of Alternatives 2,3, and 4. The traps per trawl required for Maine mimic what is required under Alternative 3, traps per trawl in all other areas mimic what is required under Alternative 2. New Hampshire state waters are exempt under Alternative 5. The closures proposed under Alternative 4 remain in place under Alternative 5.
- Alternative 6 would implement all of the requirements of Alternative 5 with a few exceptions. Doubles would be required in Massachusetts state waters instead of three traps per trawl. Also, only one closure would be implemented--from January 1 through April 30 Cape Cod Bay and the Outer Cape would be closed to fishing.

The information collected will be disseminated to the public or used to support publicly disseminated information. 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 TRPs.

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 (2012) 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 mark 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 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 with this proposed rule 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.

This request will be submitted coincident with the publication of Proposed Rule 0648-BC90 and the related draft environmental impact statement (DEIS).

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

Not applicable.

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

As stated in [50 CFR 229.11](#), Protection of Confidential Fisheries Data, which also references [NOAA Administrative Order 216-100](#), Protection of Confidential Fisheries Statistics, this information and any information leading to identification of the vessel owner is confidential. The Magnuson-Stevens Fishery Conservation and Management Act, Section 402b; also applies. The agency will not release this information in any format that could allow the public to identify any fisherman individually.

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 DEIS associated with the Proposed Rule includes several alternatives that NMFS will solicit comment on during a 60-day public comment period. The gear marking scheme proposed in each alternative does not differ; however, the burden estimates may vary by alternative for two reasons: (1) differences in the number of affected vessels between alternatives and (2) differences in the number of buoy lines allowed per trawl for lobster and other trap/pot vessels. Based on alternatives, the number of vessels affected ranges from 6,123 to 6,143 with the average annual hourly burden ranging from 98,919 to 102,809.

The estimated number of vessels affected by the gear marking provisions proposed in the preferred alternative (Alternative 5, Relocation) is 6,143. The average annualized number of required marks over all vessel classes is 1,226,131 marks, or an average of 200 marks per vessel, which results in 17 hours per vessel (5 minutes per mark).

The average annual hourly burden is 102,178.

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).

Based on alternatives, the average annual cost burden ranges from \$65,000 to \$67,854.

Over three years, the average reporting cost burden proposed in the preferred alternative for affected vessels is \$32.93 per vessel per year. The average annual cost burden is estimated \$67,437.

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.

The current gear marking strategy (implemented in 1997) is inadequate and should be improved. From 1997-2008 there were 364 large whale entanglement events. Gear was retrieved in 129 of these cases; of the cases where gear was retrieved, gear marking led to 36 cases where fishery, location, and date were known. A stronger gear marking strategy would help answer questions such as when and where entanglements occur. Current regulations require one 4" colored mark midway along the buoy line and surface buoys to identify the vessel or fishery. Colors correspond to specific ALWTRP management areas.

The proposed gear marking scheme would maintain the current color combinations but increase the size and frequency of the mark. The new mark must equal 12” in length and buoy lines must be marked three times (top, middle, bottom). Affected vessels would increase by 1,873. The annual responses and burden for the preferred alternative, including proposed closures and exemptions, would increase by 1,103,283, the hours by 91,943 and the annual cost by \$60,682.

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.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information does not employ statistical methods.