

**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 is a resubmission of the request is for revision of this information collection, in conjunction with Final Rule 0648-BC90. NMFS modified the final rule based on public comment and will not require gear marking in waters not regulated by the Plan. Thus, the number of vessels, burden hours, and cost per vessel affected by the Preferred Alternative decreases from what was previously proposed.

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 0.9.

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). Only those fishing in waters regulated by the ALWTRP will be required to gear mark. This is a change from the first submission that required gear marking in those areas and areas exempt from the ALWTRP requirements.

**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 6 Preferred, 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 a closure 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 (Draft) 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.
- Alternative 6 (Preferred) would implement all of the requirements of Alternative 6 with a few exceptions. Doubles would be required in Rhode Island state waters instead of three traps per trawl. Gear marking would not be required in Maine exempted waters as previously proposed; therefore, the burden would decrease under this preferred alternative. *Note: on the burden spreadsheet included with this submission, Alternative 6 (Preferred) had to be relabeled as Alternative 7, due to limitations of the model.*

NMFS has an extensive rollout planned for the rule implementation. They will send permit holder letters, post the changes on this website

(<http://www.nero.noaa.gov/protected/whaletrp/index.html>), and will be updating outreach materials to reflect the change and will have these materials available for the public when they have questions.

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.**

NMFS published a proposed rule requesting public comment on the proposed measures in the *Federal Register* (78 FR 42654, July 16, 2013) and received 533 letters from commenters on the proposed rule and supporting analysis contained in the Draft Environmental Impact Statement (DEIS) via Regulations.gov, letter, fax, or email. In addition, 42,300 form letters were also received via letter and email. Approximately 27,500 letters were received from one form letter, 13,500 letters from a second form letter, and approximately 1,300 letters with slight variations to those form letters. NMFS also solicited comments on the DEIS during 16 public hearings held along the Atlantic coast.

While many were in support of the proposed gear marking scheme, some felt that the current gear marking scheme (one 4" mark mid-way down the buoy line) was adequate and did not require a change. Some also stated that the proposal to mark in all waters of Maine would be difficult and not feasible. Many people fish both inside and outside of regulated waters so they

would need to remark their gear with a different color scheme every time they fish. This is not time or cost effective. NMFS also believes the current gear marking scheme requiring only one 4-inch mark is inadequate. Frequently the line recovered from entanglement events is unmarked. NMFS believes requiring larger marks (12-inch) more frequently (3 times) will increase the amount of marked line recovered during events and thus inform future management decisions.

NMFS did, however, modify the final rule based on public comment and will not require gear marking in waters not regulated by the Plan. As such, the number of vessels, burden hours, and cost per vessel affected by the Preferred Alternative decreases from what was previously proposed.

Below is the summary of responses to the comments received on the proposed gear marking scheme:

Comment 57: Numerous people commented that requiring one color code for trap/pot lines deployed in state waters and another for Federal waters as proposed for the SERA N would force commercial fishermen to re-rig their gear because blue crab trap/pot gear is fished in state, Federal, or state and Federal waters depending on blue crab distribution. These commenters recommended a gear marking scheme that would allow fishers to quickly alter color markings without incurring the expense and labor of changing the entire line. One commenter requested a 3-year phase-in period because old or wet lines will not take paint or hold colored tape, so entirely new lines will have to be purchased before the fishery could come into compliance with this measure. However, the commenter supported the two-color marking requirements to differentiate trap/pot gear fished in state vs. Federal waters. There were also some commenters, including fishermen that did not object to the proposed gear marking scheme.

Response: The concern about different gear marking requirements between Federal and state waters is restricted to the blue crab fishery off Georgia and South Carolina. NMFS believes the requirement for trap/pot gear fished in federal waters to return to port at the end of a fishing trip will eliminate fishing for blue crab in Federal waters. Consequently, NMFS does not believe a gear marking scheme that will enable trap/pot gear to be easily moved between Federal and state waters is needed. Furthermore, the ALWTRT highlighted that gear marking is an important conservation measure, specifically gear marking that allows gear to be distinguished between areas.

NMFS appreciates the concern about old or wet lines not taking paint or holding colored tape. Since we did not receive any comments from trap pot fishermen regarding challenges with gear marking or the need for a phase-in period, NMFS does not believe these actions are necessary. See response to Comment 26.

Comment 58: Many commenters support gear marking but felt the proposed gear marking falls short of managers' needs and a more refined gear marking is necessary.

Response: Based on implementation considerations and technology presently available, NMFS believes the final gear marking scheme is appropriate. If more promising techniques become available in the future, NMFS will discuss them with the Team.

Comment 59: Many commenters stated that marking in exempted waters would be difficult and not feasible. Many fish both inside and outside of the exemption area so they would need to remark their gear with a different color scheme every time they fish in and out of the exempted waters. This is not time or cost effective.

Response: NMFS has modified the final rule based on public comment and will not require gear marking inside the exemption area (see “Changes from the Proposed Rule” section of the preamble).

Comment 60: Some commenters stated that if exempted waters were required to be marked, then Maine and New Hampshire should have different colors for their exempt waters and not be grouped together.

Response: See response to Comment 59.

Comment 61: Some commenters stated that marking the line 3 times was excessive and 1-mark mid-way down the line is adequate. The commenters felt that making the current mark larger would be the easiest approach but were unclear if this would really make a difference.

Response: NMFS believes the current gear marking scheme that requires only one 4-inch mark is inadequate. Frequently the line recovered from entanglement events is unmarked. Of the 499 entanglement events from 1997-2011 gear was only recovered in 170 cases. Of the 499 entanglement events gear marking led to 51 (10%) cases where fishery, location, and date were identified. NMFS believes requiring larger marks more frequently will increase the amount of marked line recovered during events and thus better inform future management decisions.

Comment 62: Some commenters questioned the need to mark in exempt waters if the occurrence of whales in exempt waters is rare.

Response: See response to Comment 59.

Comment 63: Two commenters cited challenges with marking offshore gear as the gear is always wet and infrequently brought back to shore. The gear is also easily identified due to its size.

Response: NMFS acknowledges this challenge but points out that offshore gear is currently required to be marked. The new gear marking scheme would expand the size and frequency of the current gear marking scheme.

Comment 64: A few commenters noted that fine scale marking in the Gulf of Maine is justifiable and more unique color codes are necessary than what is being proposed.

Response: See response to Comment 58.

Comment 65: Many commenters opposed increased gear marking in LMA1 (frequency, level, or size) stating that the gear marking only informs where the gear was set and not where the entanglement occurred. These commenters suggested that NMFS suspend increased gear marking requirements until more definitive regional markings are available.

Response: See response to Comment 58.

Comment 66: A few commenters suggested NMFS modify the proposed gear marking to better understand the gear configuration in the Gulf of Maine. The commenters suggested marking by trawl length.

Response: Various gear marking schemes were discussed by the Team over the course of several meetings during the development of this rule, including the idea suggested by the commenter. However, the Team could not reach agreement on how to mark gear based on the gear's configuration. NMFS also solicited gear marking ideas during its public scoping meetings, which also did not yield any feasible alternatives. Therefore, NMFS believes the final gear marking scheme is appropriate based on the current technology that exists and public comments received on feasibility of gear marking.

Comment 67: One commenter suggested adding a second color for each LMA. The commenter also did not support the use of orange as color for marking the Southern Nearshore Trap/Pot area as this is too similar to the red color required in other waters.

Response: Based on implementation considerations and technology presently available, NMFS believes the final gear marking scheme is appropriate (see response to Comment 63). The current color mark for Southern Nearshore Trap/Pot area is orange. The final rule does not change this color scheme.

Comment 68: One commenter suggested that rather than just 3 marks per line that the number of marks be increased for those fishing in deeper waters. The commenter also suggested marking groundlines.

Response: Based on the public comments received, NMFS believes that 3 marks per line is adequate at this time. NMFS did not propose marking groundlines through this rulemaking.

**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 FEIS associated with the Final Rule includes several alternatives. The gear marking scheme proposed in Alternatives 1-6 (Draft) do not differ; however, the scheme for Alternative 6 (Preferred, Relocation) varies slightly as a result of public comment.

The estimated number of vessels affected by the gear marking provisions proposed in the preferred alternative (Alternative 6 Preferred, Relocation) is 4,006. The average annualized number of required marks over all vessel classes is 393,295 marks, or an average of approximately 98 (98.1765685) marks per vessel, which results in 8 hours per vessel.

**The average annual hourly burden is 32,775.**

**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 proposed in the preferred alternative for affected vessels is \$16.19 per vessel per year. **The average annual cost burden is estimated at \$21,631.**

**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 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 264. The annual responses and burden for the preferred alternative, including proposed closures and exemptions, would increase by 270,447, the hours by 22,540 and the annual cost by \$14,876.

**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.