

**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 a revision of a previously approved information collection, in conjunction with Final Rule 0648-BE83. There are no changes to the revision with the final rule.

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 United States (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 North Atlantic 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) and in 2014 (79 FR 38586), 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 homeport state. All fisheries regulated by the ALWTRP are required to use the gear marking scheme of three 12" marks along the buoy line (top, middle, and bottom). 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 amending the gear marking requirements. This change will improve the information NMFS collects on entanglement events. The proposed modifications to the existing ALWTRP gear marking scheme would maintain the current size and frequency of the mark but create unique marks in management areas that the ALWTRT feel warrant additional marking. This rule

will modify the current gear marking requirements in Massachusetts, Rhode Island, the Jeffreys Ledge area, the Jordan Basin area, and select Maine state waters as recommended to NMFS by the ALWTRT. Those fishing in these waters will mark with an additional color identifying the gear as being from these select areas. This change to the gear marking scheme does not affect all vessels within the plan (4,008) but only affects a select number of vessels (399) that fish in these unique areas. All vessels in these management areas currently mark their gear with one color. They will have to add an additional color to their gear as a result of this proposed change.

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 in targeted areas deemed important by the ALWTRT. The ALWTRT is focused on these unique areas due to the gear fished in these areas (single trap pots) and in the case of Jordan Basin and Jeffreys Ledge the importance of these habitat and feeding areas to large whales. 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 first 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). These gear marking requirements were subsequently changed in June 2014 (79 FR 36586) to increase the size and frequency of the marks along the buoy line. 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, and therefore the gear marking scheme is an evolving scheme

The final rule is being implemented at the recommendation of the ALWTRT. At the conclusion of its January 2015 meeting, the ALWTRT, by near consensus, recommended the amendment of the ALWTRP to update the current gear marking scheme (approved on June 27, 2014) to include unique marks for those fishing singles in the proposed exempted areas and a unique mark for both gillnets and trap/pots fished in the Jeffreys Ledge and Jordan Basin areas.

NMFS has an extensive rollout planned for the rule implementation. They will send permit holder letters, post the changes on this website: www.greateratlantic.fisheries.noaa.gov/Protected/whaletrp 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 existing gear marking requirements affect gillnet and trap/pot fisheries in various ALWTRP management areas in state and federal waters from Maine through Florida. These include 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 (80 FR 14345, March 19, 2015) and received ten substantive letters on the proposed rule via Regulations.gov and email.

The proposed gear marking scheme was overwhelming supported, particularly the marking in the high use areas. Below are summaries of the comments received regarding gear marking, and responses to them, on the proposed gear marking scheme:

Comment 1: Most commenters were in support of the new gear marking scheme, stating it is a step in the right direction to determine specific spatial resolution of the origin of entanglements. One commenter suggested the color scheme for single traps be ‘sunsetted’ after five or more years if analyses reveal that inshore single trap/pot gear is not resulting in increased entanglement risk.

Response 1: We will continue to monitor the Plan via our Monitoring Strategy. This strategy includes both annual monitoring reports and a multi-year status summary intended to review the Plan's effectiveness and compliance over a 5-year timeframe. If analyses determine that the Plan is not achieving its goals, NMFS will review the multi-year status summary to evaluate the potential causes for not achieving the management objectives and consult with the Team on the development of appropriate actions to address any identified shortcomings of the Plan.

Comment 2: One commenter suggested that NMFS consider allowing Massachusetts lobstermen to put the second color in the middle of the 12" mark instead of having each mark equal 6" as currently written.

Response 2: The two color marking scheme has been used in the Southeast fisheries since the beginning of the Plan. For consistency in marking schemes across regions we feel the current marking scheme of abutting colors is adequate. NMFS and the Team will evaluate any future gear marking scheme and make necessary adjustments through a future rulemaking if warranted.

Comment 3: One commenter disagreed with the proposed action to mark gear in Jeffreys Ledge and Jordan Basin due to their significance as 'high use areas', stating it goes against the intent of the Team to evaluate management actions in terms of co-occurrence.

Response 3: We disagree. The Team chose to develop the June 2014 vertical line management measures using the co-occurrence model. The development of the gear marking scheme in 'high use areas' was an outgrowth of discussions at the January 2015 meeting in response to exemption requests submitted by our state partners. These gear marking areas were a compromise for allowing state exemption requests to move forward and do not go against the intent of the team when evaluating management options.

Comment 4: One commenter reluctantly agreed to the new gear marking scheme, stating that the Canadian lobster industry is not required to follow similar procedures. He stated that efforts need to be initiated to address trans-boundary aspects of this problem.

Response 4: Coordination between Canada and the U.S. concerning transboundary issues has been ongoing since mid-1990. We are continuing to work with the Canadian government to develop and implement protective measures for right whales in Canadian waters.

Comment 5: One commenter stated that gear marking requirements do nothing to reduce immediate entanglement risk. They recommended developing new gear marking requirements that requires all fishermen to mark lines on all traps and gillnets, including in all exempted areas beyond the COLREG line, and reflects a systematic, region-wide approach to maximize information on the location, fishery, and gear part of lines found on entangled whales.

Response 5: Although gear marking will not reduce entanglements by itself, it is expected to facilitate monitoring of entanglement rates and assist in designing future entanglement reduction measures in targeted areas deemed important by the Team. We feel that the proposed gear marking combined with the current gear marking scheme is sufficient and will help us to target specific areas for future management if further measures are deemed necessary.

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 estimated number of vessels affected by the overall gear marking provisions in the Plan is 4,008. The estimated number of those vessels affected only by the proposed amendment is 399.

The revised average annualized number of required marks for 4,008 vessels will be 426,854 marks or an average of approximately 106 marks per vessel, increased from an average of 98 marks. This results in an average 8.8 hours per vessel.

The total revised annual hourly burden for the ALWTRP will be 35,571. This represents an increase of 2,796 from the current burden of the ALWTRP of 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 total reporting cost burden for the ALWTRP will be \$6.18 per vessel per year. The average new total annual cost burden for the ALWTRP is estimated at \$24,758.

Over three years, the average reporting cost burden proposed in the preferred alternative for 399 affected vessels is \$8.65 per vessel per year (including the current cost). **The average annual cost burden of this additional gear marking only is estimated at \$3,450.**

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.

Program Change:

The proposed unique gear marking for vessels entering the specified areas adds 2,796 hours and \$3,450 annualized burden and cost to the current totals.

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 as is. 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.