

SUPPORTING STATEMENT
U.S. Department of Commerce
National Oceanic & Atmospheric Administration
Gear Marking Requirements for 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 request for extension of a previously approved information collection. There are changes to the number of respondents and responses as explained in question 15.

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 also required to mark buoy lines using 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. If the mark consists of two colors, EACH COLOR mark may be 6-inches for a TOTAL MARK of 12-inches. Each color code must be permanently affixed on or along the line and each color code must be clearly

visible when the gear is hauled or removed from the water. Paint, tape and colored ties are the most common gear marking methods used.

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, when gear is retrieved from an entangled whale, only a portion of gear is recovered 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 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 was 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 maintains this website to disseminate information: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-plan>.

The information collected is 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, 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 of 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 allow 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 requested public comment on the proposed measures in the Federal Register (84 FR 50409, September 25, 2019). Two comments were received.

One comment was received from the Marine Mammal Commission in support of continuing this rule. The Marine Mammal Commission expressed concerns that the burdens to mark gear did not account for the time and costs to obtain marking materials. As marking can be done using a variety of affordable materials (including tape, paint, and colored ties) that are widely available at stores that fishermen frequent for gear and vessel maintenance supplies, we do not believe obtaining these marking materials will add any burden of time or money to fishermen.

A group comment letter was received from six environmental organizations. They generally supported continued gear marking, however suggested that current requirements should be expanded to increase resolution between areas and fisheries, require permit-specific marking throughout the line, increase the frequency of marks, and to require marking of groundlines as well as buoy lines. These comments are outside the scope of the existing information collection renewal request, however they are relevant and will be considered in ongoing ALWTRP amendment efforts.

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

There are no payments or gifts provided to respondents.

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.

No questions of a sensitive nature will be asked.

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

It is estimated that 3 burden hours each year, per vessel, for vessels who are remarking their existing gear. Using information from Atlantic coastal states and federal permitting and vessel trip reports, Industrial Economics Inc. has developed a model to identify the number of fishermen actively fishing in 2016 and to estimate the number of buoy lines fished during 2016. Using these data (model run April 23, 2019), they estimated the number of buoy lines likely to need marking each year. As seen in the table below, they estimate that there are approximately 3,672 actively fishing vessels that need to remark an average of 47 marks per year. Each mark takes approximately 5 minutes, for a total of 14,382 hours. Applying the annual hourly wage rate for fishermen of \$13.93, that results in a total estimated annual wage burden cost of approximately \$200,341 each year.

Information Collection	Type of Respondent	# of Respondents	Annual # of Responses / Respondent	Total # of Annual Responses	Burden Hrs / Response	Total Annual Burden Hrs	Hourly Wage Rate (for Type of Respondent)	Total Annual Wage Burden Costs
Gear Marking	Fisherman	3,672	47	172,584	0.08333	14,382	\$13.93	\$200,341
Totals				172,584		14,382		\$200,341

- Each mark requires approximately 5 minutes of time
- Hourly wage rate taken from *May 2018 National Occupational Employment and Wage Estimates, United States* https://www.bls.gov/oes/current/oes_nat.htm

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).

The estimated cost for materials for this information collection is \$2.82 each year per respondent

(vessel), for maintenance of and remarking existing gear. This results in a total expense of an estimated \$10,355 for the 3,672 vessels marking existing gear. On average, each vessel must replace about 47 marks per year for a total of 172,584 marks created.

Information Collection	# of Respondents	Annual # of Responses / Respondent	Total # of Annual Responses	Cost per response	Cost Burden / Respondent	Total Annual Cost Burden
Gear Marking	3,672	47	172,584	\$0.06	\$2.82	\$10,355
TOTALS			172,584			\$10,355

Prices in 2019 inflated from 2014 using the Consumer Price Index for All Urban Consumers: All Items. <https://fred.stlouisfed.org/series/CPIAUCSL>

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

The Federal government does not incur any costs associated with this extension. Review of gear marking is a component of a thorough analysis of gear retrieved from entangled whales and does not represent an additional burden.

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

Information Collection	Respondents		Responses		Burden Hours		Reason for change or adjustment
	Current Renewal / Revision	Previous Renewal / Revision	Current Renewal / Revision	Previous Renewal / Revision	Current Renewal / Revision	Previous Renewal / Revision	
Gear Marking	3,672	4,008	172,584	426,854	14,382	35,571	Number of respondents has decreased slightly based on reported fishing behavior in 2017 compared to 2014. The number of responses and burden hours per respondent have also declined because 2016 estimates included new markings. Gear is already marked so new numbers reflect annual replacement estimates.
Totals	3,672	4,008	172,584	426,854	14,382	35,571	

Information Collection	Labor Costs		Miscellaneous Costs		Reason for change or adjustment
	Current	Previous	Current	Previous	
Gear Marking	\$200,341	Not calculated	\$10,355	\$24,758	Labor costs were not previously calculated. The miscellaneous cost decrease reflects that only existing gear needs to be marked, rather than new gear, which was included in the previous renewal.
Total for Collection	\$200,341	Not calculated	\$10,355	\$27,758	

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

Collection results will not be published.

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.

This collection does not involve any paper forms, so it is not possible to display the expiration date for OMB approval of the information collection.

18. Explain each exception to the certification statement.

There are no exceptions for compliance with provisions in the certification statement.