

SUPPORTING STATEMENT
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Gear-Marking Requirement for Atlantic Large Whale Take Reduction Plan
OMB Control No. 0648-0364

Abstract

In 1996, pursuant to section 118 of the MMPA, the National Marine Fisheries Service (NMFS) established and convened an Atlantic Large Whale Take Reduction Team (Team) to assist in the development of the Atlantic Large Whale Take Reduction Plan (Plan). Throughout this process, the Team has provided NMFS with recommended measures designed to reduce serious injury and mortality to North Atlantic right (*Eubalaena glacialis*), humpback (*Megaptera novaeangliae*), minke (*Balaenoptera acutorostrata*), and fin (*Balaenoptera physalus*) whales from incidental interactions with commercial fishing gear. In order to attempt to gather information on entanglements, the Team developed gear marking requirements. As a result, any person setting trap/pot or gillnet gear to fish commercially in some areas of the Atlantic Ocean are required to paint or otherwise mark their gear with specific color codes, designating the type of gear and area where it is set, as well as buoy marking requirements.

NMFS is proposing to revise the existing gear marking regulations in Northeast Region Trap/Pot Management Area commercial trap/pot fisheries because increased gear marking is necessary to improve our understanding of where entanglement incidents occur (RIN 0648-BJ09). The goal of this revision is to further enable NMFS to reduce injuries and deaths of large whales, especially North Atlantic right whales, due to incidental entanglement in United States commercial fishing gear. In order to develop fair and effective management measures, the Team requires comprehensive data on when, where, and how fixed gear vessels fish, and where whales become entangled in fishing gear.

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

As noted above, in 1996, pursuant to section 118 of the MMPA, NMFS established and convened the Team to assist in the development of the Take Reduction Plan. During this process, the Team provided NMFS with recommended measures designed to reduce serious injury and mortality to North Atlantic right (*Eubalaena glacialis*), humpback (*Megaptera novaeangliae*), minke (*Balaenoptera acutorostrata*), and fin (*Balaenoptera physalus*) whales from incidental interactions with commercial fishing gear. To address the continued entanglement of large whales in commercial fishing gear, NMFS has reconvened the Team several times and modified the Plan to include additional measures to gain information on the source of entanglements and to reduce serious injury and mortality from entanglement, including

amendments in 2007 (72 FR 57104 which amended 50 CFR 229, 50 CFR 635 and 50 CFR 648) and in 2014 (79 FR 38586 modification to 50 CFR 229). Modifications included requirements to mark 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. The rope in vertical buoy lines must also be marked; generally requiring three one-foot (30.5 cm) marks within the top, middle, and bottom of the rope. Large areas have been exempted from the buoy line marking requirements, primarily in state waters.

NMFS proposes to amend the regulations to reduce the incidental mortality and serious injury to large whales in Northeast Region Trap/Pot Management Area commercial trap/pot fisheries to meet the goals of the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). The proposed changes involve a combination of fishing gear modifications and seasonal area buoy line closures aimed at reducing the risk that large whales will be killed or seriously injured as a result of entanglement in U.S. commercial fishing gear. Increasing gear marking to improve our understanding of where entanglement incidents occur is also necessary. When entangling gear is present on a whale, it is not always retrieved, and when gear is retrieved, it cannot always be identified to fishery or location. The Team discussed measures to increase visibility of marks from vessels and airplanes as well as requiring marks in all waters including those currently exempt. Therefore, the Team supports efforts to expand gear marking to further improve efforts to determine entanglement location.

The gear marking scheme proposed would include the entire Northeast Region from the coast through the EEZ, including waters currently exempted from gear marking requirements and would add state-specific color markings to lobster and crab trap/pot fisheries in the Northeast Region. A large three-foot (91 cm) mark would be required within the top two fathoms (60.96 cm) of the buoy. 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. Vessels permitted to land lobster in Maine are already required to mark their ropes using this gear marking scheme (Maine Division of Marine Resources, Chapter 75.02); therefore, these vessels are not included in the cost analysis.

There is urgency to respond to the rapid decline in the North Atlantic right whale population, and the fishery source and/or country of serious injury and mortality to right whales cannot be determined in a significant number of documented cases. As such, NMFS is focusing the scope of initial modifications to the Plan on Northeast Region lobster and Jonah crab trap/pot fisheries, which represent 93 percent of the vertical buoy lines fished where right whales occur according to a line model developed for NMFS by Industrial Economics Inc. Determining the magnitude of reduction in serious injury and mortality that is needed is a challenge due to the uncertainty regarding the type of gear that entangles whales and the location and country of origin where the entanglement occurred. Many large whale entanglements are never seen, there is often no gear present on whales showing scars, and gear cannot always be recovered from those whales that are seen entangled. Further, even when gear is recovered, it can rarely be identified to a source fishery and even more rarely, to a precise fishing location.

Table 1: Description of proposed gear marking scheme by state (Maine requirements are shaded to show existing state regulations. Vessels and economic impacts are not included in this analysis because those costs are incurred under the state rules rather than this rulemaking).

Area	Proposed Gear Marking Scheme
Entire Northeast Region	Three-foot (91 cm) long state-specific (see color below) mark within two fathoms (60.96 cm) of the buoy. In Federal waters, an additional six-inch (15.25 cm) green mark within one foot (30.5 cm) of the long mark in the surface system. This mark must be solid; therefore, colored ties are not an allowed gear marking method.
Maine Non-Exempt	Purple. Three one-foot (30.5 cm) marks: at top, middle and bottom of buoy line. In Federal waters, an additional six-inch (15.25 cm), green buoy line mark within two fathoms (60.96 cm) of the buoy.
New Hampshire	Yellow. In state waters: two one-foot (30.5 cm) marks in top half and bottom half of buoy line. Beyond state waters, three one-foot (30.5 cm) marks: at top, middle and bottom of line. In Federal waters, an additional six-inch (15.25 cm), green mark within one foot (30.5 cm) of the long mark within two fathoms (60.96 cm) of the buoy.
Massachusetts	Red. In state waters: two one-foot (30.5 cm) marks in top half and bottom half of buoy line. Beyond state waters three one-foot (30.5 cm) marks: at top, middle and bottom of line. In Federal waters, an additional six-inch (15.25 cm), green mark within one foot (30.5 cm) of the long mark within two fathoms (60.96 cm) of the buoy.
Rhode Island	Silver/gray. In state waters: two one-foot (30.5 cm) marks in top half and bottom half of buoy line. Beyond state waters. 3 one-foot marks (30.5 cm) at top, middle and bottom of line. In Federal waters, an additional six-inch (15.25 cm) green mark within one foot (30.5 cm) of the long mark within two fathoms (60.96 cm) of the buoy.
LMA 3	Black. In Federal waters add a three-foot long (91 cm) mark within two fathoms of the buoy, and an additional six-inch (15.25 cm) green mark within one foot (30.5 cm) of the long mark within two fathoms (60.96 cm) of the buoy. These vessels are already required to mark their rope with three one-foot (30.5 cm) black marks.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

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 North Atlantic right, humpback, minke, and fin whales. Generally, when gear is retrieved from an entangled whale, it cannot always be identified to a fishery or location. 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, or fishing locations assist NMFS and the Team in focusing future management measures on specific problem areas and issues, which may avoid unnecessarily regulating fisheries with overly broad measures.

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. Gear marking will not reduce bycatch in and of itself, but it is expected to facilitate monitoring of entanglement rates and assist in designing future bycatch reduction measures in targeted areas deemed important by the Team. The frequency of information used is primarily correlated with the occurrence of entangled whales and/or the recovery of entangled gear.

In developing serious injury and mortality estimates for use in Stock Assessment Reports and by the Team, NMFS attributes definitive source of serious injuries and mortalities only when gear is present and identified to a fishery source. Therefore, the additional regulations that are being considered, propose to improve the quantity and quality of data available for future rulemaking and investigating some of the uncertainties discussed above regarding gear type and the country where the entanglement occurred.

NMFS has implemented previous gear-marking requirements in as simple a manner as possible and to be as compatible with other state or federal fishery management plans and take reduction plans. NMFS developed the first gear-marking requirements (72 FR 57104) with the assistance of its fishing industry liaisons, feedback from Team members, and public comments received on a proposed rule in 2005 (70 FR 35894). These gear marking requirements were subsequently changed over time, including most recently in June 2014 (79 FR 36586) to increase the size and frequency of the marks along the buoy line. The newest revisions to these gear marking requirements will continue to refine the level of information gained from these marks. 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; therefore, the gear marking scheme is ever evolving.

The information collected is disseminated to the public or used to support publicly disseminated information. NMFS maintains this website (<https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-plan>) to disseminate

information including annual gear analysis information in entanglement reports, which can be found at the following site:

<https://www.greateratlantic.fisheries.noaa.gov/policyseries/index.php/GARPS/article/view/21/16>.

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 collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

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

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Question 2

Presently, marking for trap/pot and gillnet fisheries and their associated surface gear, is required under several Federal and state fishery management plans. NMFS’s requirements complement existing Federal and state fishery management plans and take reduction plans. Although similar colors may be used in other fisheries, color combinations prevent exact duplication. Current gear marking requirements are described in depth at: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-plan#outreach>.

Current NMFS Trap/Pot Gear Marking Requirements:

Vertical buoy lines are to be marked with three 12-inch (30.5 cm) colored marks: one at the top of the buoy line, one midway along the buoy line, and one at the bottom of the buoy line. If the mark consists of two colors, each color mark may be 6 inches (15.25 cm), for a total mark of 12 inches (30.5 cm). 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.

Table 2: Description of NMFS trap/pot gear marking requirements.

Gear Marking Color	Applicable Trap/Pot Management Area
Red	Massachusetts Restricted Area Northern Nearshore Trap/Pot Waters

	Northern Inshore State Trap/Pot Waters Stellwagen Bank Jeffreys Ledge Restricted Area Great South Channel Restricted Area overlapping Lobster Management Area (LMA) 2 and/or the Outer Cape LMA
Red & Blue	Exempt RI state waters
Red & White	Exempt MA state waters in LMA 1
Red & Black	Exempt MA state waters in LMA 2
Red & Yellow	Exempt MA state waters Outer Cape
Red & Orange	Isle of Shoals, Maine
Red & Purple	Jordan Basin (Trap/Pot) overlapping LMA 1
Red & Black	Jordan Basin (Trap/Pot) overlapping Offshore Trap/Pot Waters
Orange	Southern Nearshore Trap/Pot Waters.
Black	Offshore Trap/Pot Waters; Great South Channel Restricted Area overlapping with the LMA 2/3 Overlap and/or LMA 3
Blue & Orange	Southeast Restricted Area North (state waters)
Green & Orange	Southeast Restricted Area North (Federal waters)

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

The fisheries affected by this gear marking rule are composed almost entirely of small businesses. The existing gear marking requirements affect gillnet and trap/pot fisheries in various Plan management areas in state and federal waters, from Maine through Florida. 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. Since the majority of the lobster and crab trap/pot fishermen that would be regulated under this modification to the gear marking requirement already mark their lines and buoys, NMFS assumes that this additional marking requirement places minimal additional burden on fishermen in the form of added maintenance time and minimal material costs.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

These gear-marking requirements are designed to help NMFS further improve the quality of information concerning the taking of endangered North Atlantic right, humpback, minke, and fin whales incidental to commercial fishing operations. Specifically, information collected through gear marking helps NMFS and the Team identify the type 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 continue to be used to tailor management measures to reduce the risk of mortality and serious injury of marine mammals in commercial fishing operations.

These gear-marking requirements would provide greater detail regarding where entanglements occur and what type of gear is involved, which helps prevent future management measures from being overly broad and affecting 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 would cause an information 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 OMB guidelines.

8. If applicable, provide a copy and identify the date and page number of publications in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

A proposed rule (RIN 0648-BJ09) will be submitted to the *Federal Register*, concurrently with this submission to OMB.

9. Explain any decision to provide any payment or gift 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 the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

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. If gear analysis were to be traced to an individual, neither NMFS or any contractor assisting with gear analysis, will 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 or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No questions of a sensitive nature will be asked.

12. Provide estimates of the hour burden of the collection of information.

Information Collection	Type of Respondent (e.g., Occupational Title)	Number of Respondents / Year (a)	Annual Number of Responses / Respondent (b)	Total # of Annual Responses (c) = (a) x (b)	Burden Hrs / Response (d)	Total Annual Burden Hrs (e) = (c) x (d)	Hourly Wage Rate (for Type of Respondent) (f)	Total Annual Wage Burden Costs (g) = (e) x (f)
Gear marking on vertical buoy lines	Fisherman	1,670 Vessels	334.4 Marks per vessel	558,448 total marks	Average 8.4 minutes per mark	78,182.72 Annual burden hours	\$25.15	\$1,963,949.93 Annual wage burden costs
Total				558,448 Total marks		78,182.72 Annual burden hours		\$1,963,949.93 Annual wage burden costs

Using information from Atlantic coastal states, federal permitting, and vessel trip reports, NOAA has identified the number of vessels and buoy lines actively fished, as well as the total number of marks required. As seen in the table below, we estimate that there are approximately 1,670 vessels that need to remark an average of 334.4 marks each year. Each mark takes approximately 8.4 minutes to apply. Applying the annual hourly wage rate for fishermen of \$25.15, results in a total estimated annual wage burden cost of \$1,963,949.93. Due to rounding differences in calculations, small differences in the burden cost values have been calculated in the DEIS, calculating the annual wage burden cost at \$2,017,282.00. This minor difference of less than 3% in the estimated value does not impact the overall collection of information. Because Maine fishermen have marked gear under existing Maine regulations, these calculations do not include Maine vessels and buoy lines.

The cost model to calculate wage rate assigns an implicit value to fishermen’s time based on labor rates in professions they would pursue if not involved in fishing. This is the “opportunity cost” of time. To identify alternative professions, the analysis relies on responses provided to a survey administered by the Gulf of Maine Research Institute in 2005 (GMRI, 2006). The GMRI survey asked a sample of 1,158 randomly selected lobstermen a variety of questions regarding education, vessel characteristics, fishing effort, and other aspects of their work. Compiled and published in 2006, the survey findings guide a number of assumptions in the cost and socioeconomic analysis presented in the environmental impact analysis.

When asked about alternative professions, the GMRI survey respondents most commonly indicated that they would be involved in carpentry, other trades, vessel maintenance, merchant marine activity, or another aspect of commercial fishing (i.e., harvesting other species, boat maintenance). The cost analysis uses the distribution of responses to develop a weighted average wage rate of \$25.15 that reflects the opportunity cost of a fisherman’s time.

GMRI, Lobster Socioeconomic Impact Survey, prepared by Market Decisions, prepared for Laura Taylor Singer and Daniel S. Holland, November 16, 2006.

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

Information Collection	Number of Respondents/year (a)	Annual Number of Responses / Respondent (b)	Total Number of Annual Responses (c) = (a) x (b)	Cost Burden / Respondent (h)	Total Annual Cost Burden (i) = (c) x (h)
Gear marking on vertical buoy lines	1,670 Vessels per year	Average 546 feet (166.4 m) of marking per vessel	911,820 total feet (277,922.7 m) of marking	\$21.84 per vessel	\$36,472.80
TOTAL	1,670 Vessels per year	Average 546 feet (166.4 m) of marking per vessel	911,820 total feet (277,922.7 m) of marking	\$21.84 per vessel	\$36,472.80

The estimated cost for materials for this information collection is \$21.84 per vessel per year. This is based on the cost of standard duct tape, which is approximately \$5 for 2” x 60 yards, or \$0.17 per square foot. When wrapped around a 3/8-inch line, one foot of duct tape will cost \$0.04 per foot. The total footage of marks for all vessels is 911,820 feet (277,922.7 meters), or an average of 546 feet (166.4 meters) of marks per vessel. Therefore, the total annual cost burden for all vertical buoy line marking is \$36,472.80 per year.

There is no record keeping burden with this rulemaking.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff),

and any other expense that would not have been incurred without this collection of information.

Based on 40 hours of effort and 6 hours of supervisory review per year to prepare this collection of information, the total cost to the government is \$2,012.33 per year. The total cost to the government was calculated using the Standard Pay Table for Performance Payout System, for the Boston, MA area Scientific & Technical positions, issued on December 26, 2019.

<https://www.commerce.gov/sites/default/files/2020-01/2020%20rpstandard.pdf>

Table 5: Estimated annualized cost to the Federal government to prepare the collection of this information. No travel, fringe or other costs outside of salary is required.

Cost Descriptions	Grade/Step	Loaded Salary / Cost	Percent of Effort	Fringe (if applicable)	Total Cost to Government
Federal Oversight					
Supervisory review	Band 5, Step 3	\$128,678	< 1% of annual effort (1 hour)		\$61.77
Supervisory review	Band 4, Step 3	\$106,641.50	< 1% of annual effort (5 hours)		\$385.54
TRT coordinator, economist and support staff preparing materials and economic impact	Band 3, Step 3	\$81,511.50	2% of annual effort (40 hours)		\$1,565.02
Travel					\$0.00
Other costs					\$0.00
TOTAL					\$2,012.33

15. Explain the reasons for any program changes or adjustments reported in ROCIS.

The tables below show information related to the information collections including reasons for any changes or adjustments.

Table 6: Changes in number of respondents, responses and burden hours between current and previous rulemaking submission.

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 on vertical buoy lines	1,670 Vessels	3,672 Vessels	558,448 Marks	172,584 Marks	78,182.72 Annual burden hours	14,382 Annual burden hours	This analysis only accounts for vessels using trap/pot gear, while previous collections have also accounted for gear marking for vessels in gillnet fisheries. This analysis also assumes that fishermen will remark all vertical buoy lines every year, instead of once every three years, as past collections have considered. This analysis also encompasses the increased frequency of marks per vertical buoy line.
Total for Collection	1,670 Vessels	3,672 Vessels	558,448 Marks	172,584 Marks	78,183 Annual burden hours	14,382 Annual burden hours	
Difference	-2,002 vessels		+385,864 marks		+ 63,801 hours		

Table 7: Changes in labor and miscellaneous costs between current and previous rulemaking submission.

Information Collection	Labor Costs		Miscellaneous Costs		Reason for change or adjustment
	Current	Previous	Current	Previous	
Gear marking on vertical buoy lines	\$1,963,949.93	\$199,539.89	\$36,472.80	\$10,355	This analysis also assumes that fishermen will remark all vertical buoy lines every year, instead of once every three years, as past collections have considered. This analysis also encompasses the increased frequency of marks per vertical buoy line.
Total for Collection	\$1,963,949.93	\$199,539.89	\$36,473	\$10,355	
Difference	+1,764,410		+26,118		

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used.

Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

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 that display would be inappropriate.

This collection does not involve 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 identified in “Certification for Paperwork Reduction Act Submissions.”

The agency certifies compliance with [5 CFR 1320.9](#) and the related provisions of [5 CFR 1320.8\(b\)\(3\)](#).