Joint New England and Mid-Atlantic Council Omnibus Alternative Gear-Marking Framework Adjustment

Decision Document

July 2025

Proposed Management Changes in this Framework Adjustment

- Provide alternative surface marking provisions for fixed-gear fisheries in the Greater Atlantic Region to allow the use of fixed gear without a persistent buoy line and reconcile fishery management plan regulations with recent and potential future changes to Marine Mammal Protection Act regulations.

Background

This framework adjustment is intended to provide fishermen additional harvest opportunities and greater flexibility in their business operations. To ensure that fishermen are allowed as many fishing opportunities as possible, this framework adjustment would modify current gear-marking regulations to provide increased access to areas where traditional fixed gear with persistent buoy lines is restricted. Also, by allowing additional types of gear to be approved for use, this framework adjustment would provide fishermen increased gear options.

Section 118 of the Marine Mammal Protection Act (MMPA) mandates that NOAA's National Marine Fisheries Service (NMFS) develop and implement Take Reduction Plans that prevent the depletion, and assist in the recovery, of certain marine mammal stocks that are killed or seriously injured in commercial fishing gear. The MMPA requires a Take Reduction Plan to (1) reduce mortality and serious injury to less than a marine mammal stock's Potential Biological Removal (PBR) within six months of the plan's implementation date, and (2) establishes a long-term goal of reducing serious injury and mortality to insignificant levels approaching a zero rate, which is defined as 10 percent of a stock's PBR, within five years. The MMPA defines PBR as the maximum number of animals, excluding natural mortalities, which may be removed from a stock while allowing that stock to reach or maintain its optimum sustainable population. In accordance with the MMPA, NMFS implemented the Atlantic Large Whale Take Reduction Plan (TRP) in 1997 to reduce deaths and serious injuries of large whales from incidental entanglement in U.S. fixed-gear commercial fisheries. NMFS receives recommendations from the Atlantic Large Whale Take Reduction Team (TRT) on measures to bring fisheries covered by the TRP into compliance with the MMPA.

The TRP was last amended in 2021 (86 FR 51970; September 17, 2021) and 2024 (89 FR 8333, February 7, 2024) to reduce risk of serious injury and mortality to North Atlantic right whales caused by entanglement in the Northeast American lobster and Jonah crab trap/pot fisheries. Measures included:

- increasing the minimum number of traps per trawl based on area fished and distance fished from shore in the Greater Atlantic Region;
- modifying existing restricted areas from seasonal fishing closures to seasonal closures to fishing with persistent buoy lines (i.e., fishing with on-demand/ropeless gear is allowed but only under select exempted fishing permits);
- expanding the geographic extent of the Massachusetts Restricted Area to include Massachusetts state waters north to the New Hampshire border; in 2024, further expanding the Massachusetts Restricted Area to include federal waters between the state and 2021 federal waters restricted areas;
- establishing two new restricted areas that are seasonally closed to fishing for lobster or Jonah crab with persistent buoy lines;
- requiring modified buoy lines to incorporate rope engineered to break at no more than 1,700 pounds (lb) (771.1 kilograms (kg)) or weak insertion configurations that break at no more than 1,700 lb (771.1 kg); and
- requiring additional marks on buoy lines to differentiate vertical buoy lines by principal port state, including unique marks for Federal waters, and expanding requirements into areas previously exempt from gear marking.

However, incidental deaths and serious injuries from commercial fishing gear continue to exceed the North Atlantic right whale's PBR level, and compliance with the MMPA requires additional protective measures. In 2022, the TRT began developing additional recommendations for take reduction measures in all East Coast fixed-gear fisheries managed under the TRP, which includes gillnet and trap/pot fisheries from Maine to Florida. Also in 2022, Congress passed the Consolidated Appropriations Act, 2023, which deemed the 2021 rule sufficient for the authorization of American lobster and Jonah crab trap/pot fisheries to be in full compliance with the MMPA and Endangered Species Act (ESA) until December 31, 2028. The Consolidated Appropriations Act also requires NMFS to issue ". . . new regulations for the American lobster and Jonah crab fisheries consistent with the [MMPA and ESA] . . . utilizing existing and *innovative gear technologies* [emphasis added], as appropriate" that "take effect by December 31, 2028." The TRT plans to meet to develop a suite of recommendations to reduce entanglement risk. The TRT will consider various measures, which may include seasonal restricted areas (which restrict the use of persistent buoy lines) and areas where only one persistent buoy line per trawl or set would be allowed. Because seasonal restricted areas are an effective tool at reducing right whale entanglement risk, it is anticipated that they will be part of the TRT's recommended TRP modifications. After receiving recommendations from the TRT, NMFS will consider those recommendations in a proposed rule that would bring the TRP fisheries into compliance with the MMPA, review recommendations and make necessary modifications, and then publish a final rule with an expected implementation date of December 31, 2028.

Although the recent changes to the TRP allow pot/trap fishing without persistent buoy lines in seasonal restricted areas, pot/trap fishermen cannot take advantage of the opportunity to fish in these areas due to gear-marking regulations in Fishery Management Plans (FMPs) promulgated under the Magnuson-Stevens Act. Currently, in the Greater Atlantic Region, FMP measures for the Northeast multispecies fishery require bottom-tending fixed gear to be marked with surface buoys, tetrahedral radar reflectors, and/or pennants (50 CFR 648.84(b)). Regional prohibitions

extend these gear-marking requirements to any person fishing with bottom-tending fixed gear (§ 648.14(k)(10)). In addition, red crab regulations require buoys on trap trawls to be marked with fishery and vessel identification marks, high flyers, and radar reflectors (§ 648.264(a)(5)). Similarly, Atlantic Coastal Fisheries Cooperative Management Act regulations require lobster trap trawls of three or fewer traps to be attached to and marked with a single buoy, and lobster trap trawls consisting of more than three traps must have a radar reflectors and a flag or pennant (§ 697.21(b)). See Appendix A for relevant gear-marking regulations. Because of these surface marking requirements, fixed gear without a persistent buoy line can only be fished in the Greater Atlantic Region with an exempted fishing permit or letter of acknowledgment, which is obtained for scientific research. In addition, if future modifications to the TRP include additional seasonal restricted areas or areas where only one persistent buoy line per trawl or set would be allowed, fixed-gear fishermen could lose access to currently fished areas because of the incompatibility with existing gear-marking regulations. To allow fishermen the opportunity to fish in these areas, current fixed-gear fisheries regulations in § 648 and § 697 would need to be changed to allow alternatives to the current surface marking requirements.

Fishing gear rigged with an on-demand or timed-retrieval device could provide a means for fixed-gear fishermen to access fishing grounds that have restrictions on the use of persistent buoy lines. Instead of using a persistent buoy line to connect a trap/pot trawl or gillnet string to a surface buoy, an on-demand device uses acoustic technology to activate a retrieval mechanism such as a pop-up buoy, inflatable lift bag, or buoyant rope spool. Timed-retrieval devices are designed to function similarly, except they utilize a timer or galvanic link to activate a device retrieval mechanism. These devices do not eliminate the use of rope in fishing gear. Rather, they minimize the duration of time the rope is in the water column to the time that a fisherman is on-site to retrieve the gear, greatly reducing entanglement risk. Permitting an on-demand or timed-retrieval system as an alternative to current gear-marking requirements would allow fixed-gear fishermen to access areas where traditional fishing gear with persistent buoy lines is currently or may be restricted.

Framework Adjustment Timeline

April 2025	NEFMC & MAFMC initiated action
May 2025	ASMFC received updates
June 2025	NEFMC & MAFMC received updates
August 2025	ASMFC receives updates
September 2025	NEFMC takes final action
October 2025	MAFMC takes final action; ASMFC receives updates on final action

Action Alternatives

Alternative Set 1: Authorization of approved gear-marking alternatives

Purpose: The purpose of Alternative Set 1 of this framework adjustment is to establish optional surface marking provisions for fixed-gear fisheries in the Greater Atlantic Region. This regulatory modification would allow for the use of fixed gear without a persistent buoy line.

Need: The need for Alternative Set 1 of this framework adjustment is to provide fishermen additional opportunities to fish in areas where, and during times when, the use of persistent buoy lines is restricted.

Alternative 1A: No Action. This alternative would not allow for alternative gear marking and would continue to require current surface markings (radar reflectors, highflyers, etc.).

Alternative 1B: Region-wide alternative gear marking. This alternative would allow the use of alternative gear marking in all Federal waters within the Greater Atlantic Region.

Alternative 1C: Spatially and temporally limited alternative gear marking. This alternative would allow alternative gear marking during and within persistent buoy line restricted areas established by the TRP.

Alternative 1D: Spatially limited alternative gear marking. This alternative would allow alternative gear marking within persistent buoy line restricted areas established by the TRP during closures and in the same geographical areas when closures are not in place.

Discussion

Several fishery regulations require the use of buoys to mark fixed gear. Under the TRP, there are four restricted areas that are closed to all fixed-gear fishing with persistent buoy lines for 3 or 4 months of the year, totaling about 13,494 square miles (34,849 square km). Under **Alternative 1A (No Action)**, fixed-gear fishermen may not access these areas during the restricted periods unless they are issued an exempted fishing permit for that purpose. Under **Alternatives 1B**, **1C**, or **1D** fixed-gear fishermen would have the option of fishing in these restricted areas if they use "ropeless" or "on-demand" fishing gear with an alternative form of gear marking approved by the Greater Atlantic Regional Administrator. The Administrator would consider and approve gear-marking alternatives based on considerations such as their *functional equivalence* to current gear markings. **Alternatives 1B**, **1C**, or **1D** would not require any fishermen to use alternative gear markings, nor would they limit the use of traditional fishing gear with persistent buoy lines. In fact, allowing gear-marking alternatives would increase fishing opportunities for the fixed-gear fishing industry in the Greater Atlantic Region by providing access in current Atlantic Large Whale Take Reduction Plan restricted areas and any future areas that may restrict the use of vertical buoy lines. Allowing the use of gear-marking alternatives in the entire Greater Atlantic Region (**Alternative 1B**) would provide the most flexibility for fishermen to fish with their preferred gear in both restricted and open areas.

Functional Equivalence

The Plan Development Team/Fishery Management Action Team (PDT/FMAT) has discussed what criteria need to be met for alternative gear markings to be functional equivalent to current gear markings. The PDT/FMAT identified the following as necessary or desirable elements of functional equivalence:

- Detectability: ocean users are able to locate the gear
- Retrievability: gear must have an identified means of retrieval
- Identification: gear is marked with identifying information (e.g., owner, vessel, permit information)
- Enforceability: enforcement is able to locate, retrieve, and redeploy the gear
- Viewing distance: gear can be detected/located from a similar minimum distance as current surface markings
- Set direction: gear's set direction is identifiable
- Timing: gear location information is accessible by others at the time of deployment and while the gear persists in the water

Alternative Set 2: Requirements to use approved gear-marking alternatives

Alternative Set 2 would only be considered if the Councils choose **Alternative 1B**, **1C**, or **1D**.

Purpose: The purpose of Alternative Set 2 of this framework adjustment is to promote the accuracy of alternative gear-marking location information.

Need: The need for Alternative Set 2 of this framework adjustment is to reduce the likelihood of inaccurate gear location marking which could lead to gear conflict, unsuccessful gear retrievals, and reduced fishermen safety.

Alternative 2A: No Action. This alternative would not require a person to demonstrate knowledge of any approved gear-marking alternatives.

Alternative 2B: Educational Requirement. This alternative would require a person to demonstrate knowledge of an approved gear-marking alternative.

Discussion

The concept of requiring the demonstration of knowledge with gear-marking alternatives in order to fish with them is drawn from similar requirements in other fisheries. Examples of how such a requirement could be structured can be drawn from the Harbor Porpoise Take Reduction Plan's pinger training program, shark endorsements, and electronic monitoring. Authorization to fish with alternative gear markings could be tied to a letter of authorization (LOA) issued by the Greater Atlantic Regional Fisheries Office. The Regional Office currently issues LOAs for several fisheries such as the summer flounder small-mesh exemption area fishery, the whiting raised-footrope trawl fishery, and several others. Issuance of an LOA could be contingent on vessel operators satisfying an educational requirement. After meeting any conditions and

obtaining an LOA, the vessel operators would be authorized to fish with gear-marking alternatives.

Impacts of Alternatives – Preliminary Analysis Summary

Alternatives	Fishery Resources	Protected Species	Physical Environment and Essential Fish Habitat	Economic
1A	0	slight/moderate - to slight +	0	0 / -
1B	0	- / +	0	+
1C	0	- / +	0	+
1D	0	- / +	0	+
2A	0	0 / slight indirect -	0	0
2B	0	0 / slight indirect +	0	slight - to +

Impacts of action alternatives: positive (+); negative (-); no impact (0).

Fishery Resource Impacts

The alternatives are administrative and not expected to impact fishery stock status as they would not allow for increased fishing effort or harvest levels of any species. **Alternatives 1B**, **1C**, and **1D** could effect when and where fishermen choose to fish. Specifically, fixed-gear fishermen may decide to fish with approved alternative gear markings in TRP seasonal restricted areas instead of their current fishing locations. However, it is not expected that this potential minimal shift in fishing location or time would have an impact on any fishery stocks or populations and it would not affect harvest control measures.

Protected Species Impacts

Alternative 1A (No Action) is not expected to introduce new or elevated interaction risks to protected species. Compared to **Alternative 1A (No Action)**, **Alternatives 1B**, **1C**, and **1D** could reduce the magnitude of the negative impact of fixed gear on protected species if fishermen choose to use gear with alternative gear markings as opposed to traditional gear markings. Fewer persistent buoy lines reduces risk of serious injury and mortality from incidental entanglement. Thus, **Alternatives 1B**, **1C**, and **1D** could reduce entanglement risk in areas where fishermen have removed persistent vertical lines or replaced them with gear-marking alternatives. However, gear using alternative markings would still pose an entanglement risk to protected species as it would not necessarily eliminate the use of vertical lines when retrieving gear, and untimely releases of buoy lines could result in vertical lines in the water. In addition, removing persistent buoy lines does not remove the risk of entanglement in gillnet panels or groundlines. **Alternatives 1B**, **1C**, and **1D** could have a negative impact on protected species in certain areas if there is an increase in fixed-gear fishing. Specifically, **Alternatives 1B**, **1C**, and **1D** are expected to result in increased fixed-gear fishing in TRP seasonal restricted areas. If fishermen choose to fish with fixed gear with alternative gear markings in seasonal restricted areas, it's likely they would reduce fishing effort in some areas where they were using traditional surface markers with persistent vertical buoy lines. Thus, a negative impact to protected species in areas that currently do not have persistent vertical lines could be associated with a reduction of negative impact to protected species in areas where fishermen are no longer fishing. However, instead of relocating their fishing effort, some fishermen may simply increase fishing effort in

seasonal restricted areas without reducing effort elsewhere. This would result in only a slight negative impact to protected species without a corresponding reduction of negative impact elsewhere.

Alternative 1B would likely provide the most benefit to protected species because it would allow for the most widespread use of gear-marking alternatives and thus the greatest possible reduction in persistent vertical buoy lines and entanglement risk. **Alternative 1D** would provide the second most benefit, followed by **Alternative 1C**, because it is expected that there would be less use of alternative gear markings if it was allowed in fewer areas and during shorter periods of time.

Alternative 2B could have an indirect positive impact on protected species because it could reduce the amount of gear conflict, which can lead to ghost gear that then poses an entanglement risk to protected species. Conversely, **Alternative 2A (No Action)** could have a slight indirect negative impact to protected species from entanglement with ghost gear that resulted from improper location marking and gear conflict.

Physical Environment and Essential Fish Habitat (EFH) Impacts

The replacement of persistent buoy lines with gear-marking alternatives from fixed gear is administrative and would not impact the physical environment or EFH because it would not result in any physical interactions with the seafloor. Any impact to the physical environment and EFH by allowing fixed-gear fishing in seasonal restricted areas while they are in effect, is expected to be negligible.

Economic Impacts

Because traditional fixed-gear cannot be fished in TRP seasonal restricted areas and there may be additional persistent buoy line closures in the future, **Alternative 1A (No Action)** could result in fixed-gear fishermen losing fishing access. This could cause fishermen to cease or relocate fishing operations, likely leading to reduced profits. However, unless or until additional persistent buoy line restricted areas are implemented, **Alternative 1A (No Action)** would have no impact. **Alternatives 1B**, **1C**, and **1D** would not require any fishermen to use alternative gear markings and thus it's expected that only fishermen who could make either the same profit or could increase their profits would choose to use gear-marking alternatives. **Alternative 1B** would provide fishermen the most flexibility for where they could use gear-marking alternatives followed by **Alternative 1D** and then **1C**. The more opportunities fishermen have to use gear-marking alternatives, the greater their ability to reduce costs associated with switching between fishing with traditional gear and gear with alternative surface markings. **Alternative 2B** would require fishermen to demonstrate knowledge of gear-marking alternatives prior to use and thus would cost them the time needed to complete this requirement. However, it could also lead to more accurate gear location information and reduced gear conflict, resulting in less lost, displaced, and damaged gear.

Appendix A. Current Gear-Marking Regulations

Magnuson Stevens Act

General Prohibitions at § 648.14(k)(10): ***Gear marking requirement for all persons.*** It is unlawful for any person, including any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to fail to comply with the gear-marking requirements of § 648.84.

Management Measures for the Northeast Multispecies and Monkfish Fisheries at 50 CFR 648.84: (b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

Management Measures for Red Crab at § 648.264(a)(5): ***Gear markings.*** The following is required on all buoys used at the end of each red crab trawl:

(i) The letters "RC" in letters at least 3 inches (7.62 cm) in height must be painted on top of each buoy.

(ii) The vessel's permit number in numerals at least 3 inches (7.62 cm) in height must be painted on the side of each buoy to clearly identify the vessel.

(iii) The number of each trap trawl relative to the total number of trawls used by the vessel (i.e., "3 of 6") must be painted in numerals at least 3 inches (7.62 cm) in height on the side of each buoy.

(iv) High flyers and radar reflectors are required on each trap trawl.

Management Measures for Black Sea Bass § 648.144(b)(1): ***Gear marking.*** The owner of a vessel issued a black sea bass moratorium permit must mark all black sea bass pots or traps with the vessel's USCG documentation number or state registration number.

- Buoy assumed, but not explicitly required.
- No additional gear-marking requirements in the ASMFC's BSB Interstate FMP.

Management Measures for Scup § 648.125(b)(3): **Pot and trap identification**. Pots or traps used in fishing for scup must be marked with a code of identification that may be the number assigned by the Regional Administrator and/or the identification marking as required by the vessel's home port state.

Atlantic Coastal Act

Lobster Gear Marking at § 697.21(b) ***Deployment and gear configuration***. In the areas of the EEZ described in paragraph (b)(4) of this section, lobster trap trawls are to be displayed and configured as follows:

(1) Lobster trap trawls of three or fewer traps deployed in the EEZ must be attached to and marked with a single buoy.

(2) With the exception of Maine permitted vessels fishing in Maine Lobster Management Zones that can fish up to ten lobster traps on a trawl with one buoy line, lobster trap trawls consisting of more than three traps must have a radar reflector and a single flag or pennant on the westernmost end (marking the half compass circle from magnetic south through west, to and including north), while the easternmost end (meaning the half compass circle from magnetic north through east, to and including south) of an American lobster trap trawl must be configured with a radar reflector only. Standard tetrahedral corner radar reflectors of at least 8 inches (20.32 cm) (both in height and width, and made from metal) must be employed. (A copy of a diagram showing a standard tetrahedral corner radar reflector is available upon request to the Office of the Greater Atlantic Regional Administrator.)