

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 75 Protected Resources

ADOPTED RULE NUMBER:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:
There is an existing regulatory requirement for persons fishing lobster gear and trap/pot gear to mark their buoy lines with specific red marks in the sliver area and in federal waters. This regulation removes the requirement for the red marks and instead requires persons fishing lobster gear and trap/pot gear in all Maine coastal waters to mark their buoy line with purple marks. Inside the Exemption Area, fishermen are required to have three purple marks: a 36-inch mark in the top two fathom of their endline, and a 12-inch mark in the middle and at the bottom of their endline. Outside the Exemption Area, fishermen are required to have 4 purple marks: a 36-inch mark in the top two fathom of endline, and 3 12-inch marks at the top, middle, and bottom of their endline. Finally, all lobster gear and trap/pot gear fished outside the Exemption Area is required to have an additional green mark of a minimum of 6-inches in the top two fathom of buoy line. Lobster gear fished inside the Exemption Area is prohibited from having a green mark. The new marking requirements are required to be in place by September 1, 2020.

EFFECTIVE DATE:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

AGENCY CONTACT PERSON: Amanda Ellis
AGENCY NAME: Department of Marine Resources
ADDRESS: 21 State House Station
 Augusta, Maine 04333
WEB SITE: <http://www.maine.gov/dmr/rulemaking/>
E-MAIL: dmr.rulemaking@maine.gov
TELEPHONE: (207) 624-6573
FAX: (207) 624-6024
TTY: (207) 633-9500 (Deaf/Hard of Hearing)

Please approve bottom portion of this form and assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____ DATE: _____

FUND	AGENCY	S-UNIT	APP	OBJT	AMOUNT
010	13A	1120	10	4946	regulations

Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta

DEPARTMENT OF MARINE RESOURCES

Chapter 75 – Protected Resources

75.02 Trap/Pot Fisheries Gear Restrictions

A. The following trap/pot fishing gear restrictions shall apply:

1. Universal requirements in coastal waters

All persons who fish lobster gear and trap/pot fisheries (including but not limited to all crab species, hagfish, finfish, whelk, and shrimp) within Maine's coastal waters shall comply with the following federal universal requirements for the ALWTRP:

- (a) No floating line at the surface; and
- (b) No wet storage of gear over 30 days.

2. Waters to the Exemption Line

1. All persons who fish lobster gear in Maine's coastal waters from the head of tide to the Exemption Line shall comply with one of the following ALWTRP options:

(a) Option 1: All buoys must be attached to the buoy line with a weak link having a breaking strength no greater than 600 pounds (272.4 kg). Weak links may include swivels, plastic weak links, rope of the appropriate breaking strength, hog rings, rope stapled to a buoy stick, or devices approved in writing by the NOAA Fisheries Assistant Administrator (See contact information in 75.01 (A)(3)). In addition, the weak link must be designed so that the bitter end of the buoy line is clean and free of knots when the weak link breaks; or

(b) Option 2: All buoy lines must be made entirely of sinking line; or

(c) Option 3: All ground lines must be made entirely of sinking line.

2. Effective September 1, 2020 buoy lines must be marked with three (3) purple marks: one at the top of the buoy line, one midway along the buoy line, and one at the bottom of the buoy line. The mark at the top of the buoy line must be 36 inches and must be in the top two fathom of buoy line. The middle and bottom marks must be 12 inches. Each color code must be permanently affixed on or along the line and the color code must be clearly visible when the gear is hauled or removed from the water.

3. It is unlawful to fish lobster gear within Maine's coastal waters inside the Exemption Line which has a buoy line marked with a green mark.

3. Sliver Area

All persons who fish lobster gear and trap/pot fisheries (including but not limited to all crab species, hagfish, finfish, whelk, and shrimp) in the Maine Sliver Area, shall comply with each the following ALWTRP requirements:

(a) All buoys, floatation and/or weighted devices must be attached to the buoy line with a weak link having a breaking strength no greater than 600 pounds (272.4 kg). Weak links may include swivels, plastic weak links, rope of the appropriate breaking strength, hog rings, rope stapled to a buoy stick, or devices approved in writing by the NOAA Fisheries Assistant Administrator (See contact information in Chapter 75.01(A)(3)). In addition, the weak link must be designed so that the bitter end of the buoy line is clean and free of knots when the weak link breaks plus each weak link must be installed as close to the buoys, floatation and/or weighted device as possible.

(b) Effective September 1, 2020 buoy lines must be marked with four (4) purple marks. There must be three 12-inch marks, one at the top of the buoy line, one midway along the buoy line, and one at the bottom of the buoy line. In addition, each buoy line must be marked with a 36-inch purple mark in the top two fathom of buoy line. Each color code must be permanently affixed on or along the line and the color code must be clearly visible when the gear is hauled or removed from the water.

- (c) ~~(b)~~ Unless marked as required by (b) in advance of September 1, 2020, Buoy buoy lines must be marked with three (3) red 12-inch (30.48 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. Each color code must be permanently affixed on or along the line and the color code must be clearly visible when the gear is hauled or removed from the water.

Chapter 75.3(c) sunsets August 31, 2020.

- (d) Effective September 1, 2020, buoy lines must be marked with an additional green mark of at least 6 inches in the top two fathom of buoy line.

~~(e)~~ (e) The attachment of buoys, toggles or other floatation devices is prohibited on ground lines.

~~(d)~~ (f) Ground lines. All ground lines must be composed entirely of sinking line.

~~(e)~~ (g) Sink rope means, for both ground lines and buoy lines, line that has a specific gravity greater than or equal to 1.030, and, for ground lines only, does not float at any point in the water column.

~~(f)~~-(h) Multiple traps only – no single traps allowed. See section 5 below for minimum number of traps per trawl. Trawls with less than or equal to 5 traps may only possess 1 buoy line.

~~(g)~~(i) Fishermen are encouraged, but not required, to maintain knot-free buoy lines.

4. Federal waters

All persons who fish lobster gear and trap/pot fisheries (including but not limited to all crab species, hagfish, finfish, whelk, and shrimp) in Maine's coastal waters southerly of the Three Mile Limit, or as shown on NOAA, National Ocean Survey nautical charts, and within Area 1, must comply with each of the following ALWTRP requirements:

(a) All buoys, floatation and/or weighted devices must be attached to the buoy line with a weak link having a breaking strength no greater than 600 pounds (272.4 kg). Weak links may include swivels, plastic weak links, rope of the appropriate breaking strength, hog rings, rope stapled to a buoy stick, or devices approved in writing by the NOAA Fisheries Assistant Administrator (See contact information in Chapter 75.01(A)(3)). In addition, the weak link must be designed so that the bitter end of the buoy line is clean and free of knots when the weak link breaks plus each weak link must be installed as close to the buoys, floatation and/or weighted device as possible.

(b) Effective September 1, 2020 buoy lines must be marked with four (4) purple marks. There must be three 12-inch marks, one at the top of the buoy line, one midway along the buoy line, and one at the bottom of the buoy line. In addition, each buoy line must be marked with a 36-inch purple mark in the top two fathom of buoy line. Each color code must be permanently affixed on or along the line and the color code must be clearly visible when the gear is hauled or removed from the water.

~~(b)~~ (c) Unless marked as required by (b) in advance of September 1, 2020, Buoy buoy lines must be marked with three (3) red 12-inch (30.48 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. Each color code must be permanently affixed on or along the line and the color code must be clearly visible when the gear is hauled or removed from the water.

Chapter 75.4 (c) sunsets August 31, 2020.

- (e) (d) Effective September 1, 2020, buoy lines must be marked with an additional green mark of at least 6 inches in the top two fathom of buoy line.

~~(e)~~ (e) Multiple traps only – no single traps allowed; See section 5 below for minimum number of traps per trawl; trawls of 5 or fewer traps must have only one buoy line.

~~(d)~~ (f) The attachment of buoys, toggles or other floatation devices is prohibited on ground lines.

~~(e)~~ (g) Ground lines. All ground lines must be composed entirely of sinking line.

- ~~(f)~~ (h) Sink rope means, for both ground lines and buoy lines, line that has a specific gravity greater than or equal to 1.030, and, for ground lines only, does not float at any point in the water column.
- ~~(g)~~ (i) Fishermen are encouraged, but not required, to maintain knot-free buoy lines.

Basis Statement:

There is an existing regulatory requirement for persons fishing lobster gear and trap/pot gear to mark their buoy lines with specific red marks in the sliver area and in federal waters. This regulation removes the requirement for the red marks and instead requires persons fishing lobster gear and trap/pot gear in all Maine coastal waters to mark their buoy line with purple marks. The purpose of changing the color of the marking is to implement a Maine-only gear mark. Inside the Exemption Area, fishermen are required to have three purple marks: a 36-inch mark in the top two fathom of their endline, and a 12-inch mark in the middle and at the bottom of their endline. Outside the Exemption Area, fishermen are required to have 4 purple marks: a 36-inch mark in the top two fathom of endline, and three 12-inch marks at the top, middle, and bottom of their endline. Finally, all lobster gear and trap/pot gear fished outside the Exemption Area is required to have an additional green mark of 6-inches in the top two fathom of buoy line. Lobster gear fished inside the Exemption Area is prohibited from having a green mark. The new marking requirements are required to be in place by September 1, 2020.

Based on the comments received, DMR made the following changes to the proposed rule prior to the adoption:

- The requirement to mark gear inside the Exemption Area was changed from 4 marks to 3 marks, with the requirement that the top mark be 36-inches, and located in the top two fathom of the buoy line; and
- The requirement for the additional 6-inch green mark in the top two fathom of the buoy line was moved from within the Exemption Area to outside the Exemption Area and it was clarified that a fisherman may not maintain a green mark on gear fished inside the Exemption Area; and
- The implementation date was moved from April 1, 2020 to September 1, 2020.

Summary of Comments:

Notice of this proposed rulemaking appeared on September 11, 2019 in the five major daily newspapers as published by the Secretary of State. On September 11, 2019, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. The public hearing was held as follows: October 2, 2019, 4:00 PM, DMR’s Augusta Office, 32 Blossom Lane, Augusta. The comment period closed October 14, 2019.

Attendance at the Public Hearing:

Members of the Public	DMR Staff
Morgan Urquhart (District Representative, Congressman Jared Golden), John Williams, Chris Welch, Jim Henderson, Jim Dow, Patrice McCarron (Executive Director, Maine Lobstermen’s Association), Nick Beaudoin, Laurin Brooks, Kristan Porter, Julie Eaton, Jamien Hallowell, Mark Jones, Bob Baines, Donny Young, Matt Gilley, Penny Overton, and Allie Moulton	Kathleen Reardon, Deirdre Gilbert, Megan Ware, Sarah Cotnoir, Jeff Nichols, Erin Summers, and Amanda Ellis

John Williams, Vice President, Maine Lobstermen’s Association, Public Hearing, October 2, 2019

The green marking for inshore gear is just to place blame on someone. Maine fishermen whether they are fishing inshore or off shore I don’t think should be differentiated against each other. For the small fishermen that are fishing ten fathom warps they’ve got to technically mark their gear five times. They’ve got three marks in it, plus a three-foot piece, plus the green marking. That doesn’t even make sense. If they mark each piece of rope with the mark that is supposed to be on that it seems like that would be enough. With the three-foot marking I don’t see what the difference is in your top rope.

Jim Dow, Public Hearing, October 2, 2019

I also have a problem with the three, 12-inch marks only the one at the top. With a three feet mark at the top, I think they ought to do away with the 12-inch mark at the top if we’re going to have a three-foot mark at the top. Otherwise than that, I am okay with it.

Julie Eaton, Chair of the Legislative Committee for the Maine Lobstering Union, Public Hearing, October 2, 2019

I absolutely support gear marking. However, I think we need to work out some issues. We have an incredible amount of boat traffic in the Fox Island thoroughfare where I fish and its not at all uncommon to lose traps from boat traffic. That is very common. If they are cutting that top mark off my buoy, they are going take that top mark off and probably more. It might be worth considering moving that mark down a little bit. It would certainly be much easier for us. In talking with the guys I fish around, John Williams is absolutely correct. I fish very tight to shore. Right now, I am praying for another spurt, I still have gear in probably less than 15 feet of water. In order to avoid having my rope stretch forever I coil it up and tie it to the becket of my trap. That being said, even if I have marked my rope five times, like you want, it is going to be tied up in a coil at the bottom, because I am in no water. I think if your going to mandate different rules for the in-shore fishermen you really need to be aware of how inshore fishermen fish. Its not that we don’t want to do this, but this has to be something that is going to work for everybody.

Matt Gilley, Public Hearing, October 2, 2019

I am in agreement with what other people have said so far. I am an inshore fisherman and I start out in the spring, like Julie said, fishing 10 to 15feet of water using just my ground line as my end line. As the year

goes on I shift out into deeper water into 30 fathom or so. I add 10 fathom lengtheners as I go. I guess I'll just want clarification. Do I have to remove the green mark every time I add a lengthener, move it up to the top two fathom? Can I just add more green marks as I add lengthener? I think we avoid a lot of the marks and have one in the middle of end lines. If you wanted green for the inshore guys just add one marker. Maybe even two, but three or four seems a little bit excessive.

Laurin Brooks, Public Hearing, October 2, 2019

I think it is redundant to do the 36-inch purple with three 12-inch. The other thing I'd like to see is maybe instead of April 1, maybe moving it to June 1 with our tags. That would give people time to bring their gear in and mark it and bring it back out.

Patrice McCarron, Public Hearing, October 2, 2019

MLA strongly supports unique gear marking by Maine lobstermen, as well as requiring marking of gear fished in Maine's exempt waters. This approach is strongly aligned with MLA's position on the pending federal whales that NMFS has been too aggressive in setting risk reduction targets for Maine.

Implementing an improved gear marking program for Maine lobster gear will go a long way in helping Maine to make our case that right whale interactions in Maine gear are rare. Distinguishing Maine lobster gear from lobster gear fished in other states is extremely important in helping us to understand and address the risk our fishery poses to right whales.

If a right whale is found with a red tracer on it, and the owner cannot be identified, there is no way to tell which trap/pot fishery or which state that gear originated from. And even in cases where the set location of the gear has been identified, that information is often not included. For example, there are 4 cases in which a red tracer has been found and 3 are known to have originated from Massachusetts. Yet, this second piece of information is rarely included when these cases are discussed. As part of this effort, Maine must require marking for gear fished in the state's exempt waters. This will allow us to rule out this gear as a potential source of the 75% of entanglements that cannot be traced to a fishery and are categorized as unknown gear. In the absence of any gear marking in these waters, Maine will continue to be implicated as a potential source of these entanglements.

The MLA has received much feedback from lobstermen on the DMR's proposal, and we believe that it can be simplified and improved. We provide the following preliminary feedback based on what we've heard so far. We will submit our formal comments in writing.

Unique color for Maine - purple

- Support unique marking for Maine to distinguish from other areas
- Do not support keeping red; support purple
- Support maintain three 12" marks at the top, middle and bottom of line

MLA also supports:

- Support requiring one 12 mark on each lengthener

Marking gear in exempt waters

- MLA supports gear marking in exempt waters through state rulemaking, but NOT through the federal whale plan
- MLA supports distinguishing this gear from gear fished in non-exempt waters as long as these waters remain exempt from the federal whale plan
- Gear marking in Maine's exempt waters must be kept as simple as possible because it impacts the majority of Maine fishermen and gear
- MLA does not support requiring a second mark at the top of the line in exempt waters. If gear fished in Maine's exempt vs non-exempt gear is to be distinguished through use of a

second mark, the MLA would recommend the second mark instead be required at the top of the line in non-exempt waters. This will affect fewer people.

- MLA's thoughts on gear marking requirements for exempt waters would be: require a 12" purple mark at the top of the line, and then a 12" mark every 10 F for a maximum of three marks.

Second mark for non-exempt waters

- MLA would support requiring a second 6" mark to be added to the top mark on the line
- Requiring an extra tracer on gear fished in non-exempt waters will impact fewer lobstermen and reduce the likelihood that gear with a tracer will be shifted outside of the exemption line in error.
- The extra gear mark should be easily removable, such as a wire tie. The mark must be removed when gear is shifted from non-exempt to exempt waters.
- The additional tracer should not be green or purple as these second marks are already required for gear fished on Jeffrey's Ledge and Jordan's Basin.

Adding a 36" mark in the top 2F of the line

- MLA is not in favor of this
- Instead, require the top 12" mark to be placed in the top 2F of the line
- If a 36" mark is required in the top 2 fathoms of the buoy line, MLA's support for its inclusion is contingent upon the following:
- This mark must replace the 12" gear mark required at the top of the line. Because this mark is required to inform the origin of entangling fishing gear, Maine must have assurance from NMFS that any gear found on a whale without this mark would be determined as not originating from Maine.

Implementation

- Move to June 1 to give guys more time to change over gear.

Glenda Beal, submitted via email, September 13, 2019; and October 2, 2019

I am writing in regard to the proposed changes in whale marking regulations. I question the method of line marking and the multiple line marks that are required. Also I question whether Maine fishermen should be changing their markings at all. Does anyone realize how long it takes to do all this marking? Or that once the brown grass begins growing on gear that no markings are even visible on a rope at all, not matter which method (paint, twine, tape) is used? Also, it makes no sense to me that 3 marks would still be required if there is also an additional requirement of a 36 inch mark at the top. Now they need two markings at the top??? Why have 12 inch markings at the top PLUS 36 inch??? This is a redundant and unnecessary requirement. I am a wife of a fisherman, and have watched my husband use a sharp tool that is made specifically for splicing to pry apart the tightly woven rope strands in order to weave in all the red twine to mark his ropes. I have worried many times that due to the extremely tight weave of the ropes, particularly the dangerous "whale rope", that he is going to stab himself because of all the force required to pry these strands apart! I am not exaggerating about the risk. I have seen the force needed to pry the rope apart, and it often must be held in numerous positions and attempted again and again before the tool (which, as I said, is made specifically for splicing) even is able to get through the strands. I took a huge sigh of relief when he was finally done with this ridiculously overdone marking requirement. Now these new additional changes are going to make the fishermen do this ALL OVER AGAIN????!! With FOUR MARKS instead of the 3?? And now even the inshore fishermen need to mark their gear FOUR TIMES??? Why not just have one green mark at the top and be done with it, as if a whale is going to be inshore anyway? Their line is short enough that one mark should suffice, if they must mark it at all. Whales have no need to swim into our shallow waters in the first place. NMFS and MDMR are caving to the pressure of law suits and activists who have no real knowledge about our local waters. Maine

fishermen are the most numerous group of American fishermen, so why not have other states change their markings instead? Less people would be effected for sure. Why the state of Maine?? What about the red lines already marked? So how do you take out the red weave and replace it with purple???? I don't see how that is even feasible or why it is even necessary. Who is going to pay the cost of the medical treatment men require when they stab themselves in the stomach or thigh? Or from the ensuing infections it causes?? Or from the back injuries of moving, unstacking and restacking all the gear numerous times to get at the rope? I know who, and it's those of us already struggling to keep up with excessive health insurance and medical bills to start with. My sons, both fishermen as well, happen to have bleeding conditions, which puts them at even greater risk from this requirement if they should stab themselves in trying to splice in the ends of the twine. This is a very real danger that is totally unnecessary, and I am sure that any other fishermen trying to abide by the regulations are in the same danger if they try to splice the twine into the rope. Some might say, well, then use tape. Here's why: Tape will not stay on and will have to be replaced over and over. Much the same with the paint. Does anyone even factor in the time consuming process this is, not matter which methods are chosen??? If fishermen are trying to work long hours, repair gear, maintain their boats and equipment, and even try to earn additional income in off season for their families, then when do they find the time to complete this new time consuming task which also requires stacking and restacking heavy traps in order to get to all the rope?? Who is figuring in the burden or cost of time required for all this effort? Should they choose to paint the rope, then where and how does a fishermen stretch out all those 50-100 fathoms of rope to make sure the paint is applied in the right places and will dry properly? One must factor in the drying time required before rope can be recoiled, which takes even longer. What about the fishermen who don't even own wharves or have spaces large enough to accommodate this? This can't be done indoors in the winter, that's for sure. It's too big of a task and too much area is needed. There is no satisfactory way to meet this requirement. If new markings are needed then other states with fewer effected fishermen are the ones who should change their markings, not Maine. If we must do anything at all to show the ropes are from Maine waters, then Maine needs to do something much more simple . What about a small clip of some kind to crimp onto the rope?? Wouldn't that work better? It would have to be something that wouldn't catch rope or cause snarls, and would still run through a hauler. Whatever is done, fishermen should be having their recommendations put into effect, not those of people who don't even know how regulations will effect fishermen. Fishermen should not have to redo all the wharps that they have finally gotten legal, and inshore gear should not need to be marked in the first place. Please reconsider what you are asking these overburdened fishermen to do.

I am writing in regard to the proposed changes in whale marking regulations. I question the method of line marking and the multiple line marks that are required. Also I question whether Maine fishermen should be changing their markings at all. Does anyone realize how long it takes to do all this marking? Or that once the brown grass begins growing on gear that no markings are even visible on a rope at all, not matter which method (paint, twine, tape) is used? Also, it makes no sense to me that 3 marks would still be required if there is also an additional requirement of a 36 inch mark at the top. Now they need two markings at the top??? Why have 12 inch markings at the top PLUS 36 inch??? This is a redundant and unnecessary requirement. It also appears from reading the proposed rules that inshore fishermen must then add a green marking to the 4 new ones already asked for, meaning that FIVE marks must now be made for inshore fishermen who have as much chance of snagging a whale as we do of getting radical environmental activists to leave the lobster industry alone. Does anyone see the ridiculousness of such a proposal—in not just the lack of protection it provides whales but to the wasted time, effort, physical stress it causes?? Particularly to the inshore men and women, already over burdened with regulations and working hard to earn livings for their families in coastal Maine communities.

I have watched my husband use a sharp tool that is made specifically for splicing to pry apart the tightly woven rope strands in order to weave in all the red twine currently required to mark his ropes. I have worried many times that due to the extremely tight weave of the ropes, particularly the dangerous “whale rope”, that he is going to stab himself because of all the force required to pry these strands apart! To pry

the rope apart, and it often must be held in numerous positions and attempted again and again before the tool (made specifically for splicing) even is able to be forced between the strands. I took a huge sigh of relief when he was finally safely done with this ridiculously overdone marking requirement. Now these new additional changes are going to make the fishermen do this ALL OVER AGAIN????!! With FOUR MARKS instead of the 3?? And now even the inshore fishermen need to mark their gear FIVE TIMES??? Why not just have one green mark at the top and be done with it, if inshore guys must mark at all? Their line is short enough that one mark should suffice, if they must mark it at all, otherwise they might as well just paint up a rainbow of rope for each buoy. Who has really thought this out?? Should a right whale magically appear in the shallow waters, there would be no “entanglement” to it in the first place, since shorter warps would never loop around anything as large as a whale. Whales have no need to swim into our shallow waters in the first place. It’s even questionable as to whether right whales have even entangled in any off shore Maine gear since the first whale rules began. NMFS and MDMR are caving to the pressure of law suits and activists who have no real knowledge about our local waters. Maine fishermen are the most numerous group of American fishermen, so why not ask other states to change their markings instead? Less people would be effected for sure. Why the state of Maine??

What about the red lines already marked? How do you take out the red weave and replace it with purple????!! This is not feasible nor necessary. Tape is not an effective option either since tape may not stay on permanently and will have to be replaced over and over. Much the same with the paint. Does anyone even factor in the time consuming process this is, no matter which methods are chosen??? If fishermen are trying to work long hours, repair gear, maintain their boats and equipment, and even try to earn additional income in off season for their families, then when do they find the time to complete this new time consuming task which also requires stacking and restacking heavy traps in order to get to all the rope?? Who is figuring in the burden or cost of time required for all this effort?

The burden required of the shallow water fishermen is as great or greater than to the offshore boats.

Inshore fishermen often have singles and pairs. Does anyone realize how many ropes will need to be marked FIVE TIMES for no good reason?? For a gang of 800 traps, fished in singles and pairs, marking would need to be done to 400 to 800 ropes, multiplied by FIVE MARKS PER LINE for these guys who have no chance of entangling a right whale. Common sense needs to be used here!

Should they choose to paint the rope, then where and how does an offshore fishermen stretch out all those 50-100 fathoms of rope to make sure the paint is applied in the right places and will dry properly? One must factor in the drying time required before rope can be recoiled, which takes even longer. What about the fishermen who don’t even own wharves or have spaces large enough to accommodate this? This can’t be done indoors in the winter, that’s for sure. And if stretched outside, it also must be done above certain temperatures due to paint drying requirements. It’s too big of a task and too much area is needed. There is no satisfactory way to meet this requirement.

If new markings are needed then other states with fewer effected fishermen are the ones who should change their markings, not Maine. If we must do anything at all to show the ropes are from Maine waters, then Maine needs to do something much more simple . What about a small clip of some kind to crimp onto the rope?? Wouldn't that work better? It would have to be something that wouldn't catch rope or cause snarls, and would still run through a hauler. Whatever is done, fishermen should be having their recommendations put into effect, not those of people who don’t even know how regulations will effect fishermen. Fishermen should not have to redo all the wharps that they have finally gotten legal, and inshore gear should not need to be marked in the first place. Please reconsider what you are asking these overburdened fishermen to do.

Chris Moore, submitted via email, September 13, 2019

I am a licensed Maine lobsterman #5525, I am writing to commend on new proposed rope marking. The majority of fisherman support having our own color(purple), but not the additional changes. We should just be changing our existing red marking to purple. The addition of green inside exemption does not help considering we move the same gear on either side of it and will not be adding or removing the green each

shift. You have over complicated a simple task of switching a color into a labor intensive task that will have less compliance and support.

Andy Hawke, submitted via email, October 1, 2019

I see the new 3 purple, I guess find float rope that color, it does fade some, but am wondering about the 36 inch piece? The haulers do get a hold of this sting, rope, zip Ty's and rips it apart at times, The Green inside exemption and none outside? People use same rope from shoreline out, no ones going to take that in and out or buy new rope I don't believe any way that's my say on the 36 inch and green. I don't know the answer but the younger gen doesn't know what to do invest into boats houses ect or tho there hands up, definitely getting out of control.

Loren Faulkingham, submitted via email, October 1, 2019

I want to state straight up that I feel any marking of lobster gear inside the exemption line is unnecessary. On the other hand, if gear marking is going to be required, I feel the proposed regulation is way overkill in many areas. 1st off, requiring both a 36" mark and a 12" at the top is excessive. I don't see what two marks will accomplish that one won't. 2nd of all, 5 markings on a short buoy line, 50'-60' is totally ridiculous. I see no reason why the amount of markings can't be based on the length of the line, one mark up to 120', 2 120'-240', 3 for 240'+. 3rd, I feel it is also unnecessary to require those in the exemption area to have both green and purple markings because just a green mark would indicate inside the exemption line and Maine waters both. 4th, red markings are already required and I feel Maine, having the largest fleet, should be able to keep that color. Based on those reasons, this is my proposal for Maine. Green marks for inside the exemption line and red outside the exemption line (purple if it must be changed.) One mark up to 120', 2 for 121'-240', 3 for 241'+. No 36" mark, all marks 8" minimum. Please consider my proposal as effective at indicating the gear's origin and a better alternative based on labor and cost effectiveness to the fisherman.

Chad Preston, submitted via email, October 1, 2019

All fishermen inside the 3 mile limit should not have to deal with this issue. I've been fishing since I was 7 years old now 45 and never seen any whales. My dad started fishing when he was 13 and now is 75 never seen any whales !!! Let this nonsense stop!! My hands are cut to shit from the hog rings hold my buoys on !!!! Enough is enough!!!

Joe McDonald, submitted via email, October 2, 2019

First and foremost I think the scheduled hearing was possibly the poorest date give or take a week to expect industry attendance. For anyone following the season it has been a much later start than the last 15 years or so, and with the exception of winds over 40mph fishermen will be working the length of the coast as we are now entering what looks to the peak of our inshore season. To get to Augusta by 4pm is absurd, hopefully folks email their opinions. With that being said I strongly oppose the idea of marking the head of the tide to exemption line with 3 purple and an additional green. marking. Many areas I fish have 8fathom warps and are often high-density fishing areas and traps are often cut out of snarls at dogbone. (where the rope is attached to the trap) We will be re-rigging twice a season to comply with this foolishness. In the spirit of thinking, we will satisfy the whale money crowd I would support marking with green and purple in the top 2 fathoms from the head of tide to exemption line. I cannot speak to the 3 markings outside of exemption as I do not fish enough gear in that area that would warrant an opinion. I hope some common sense is applied in this consideration process, and not haste from looming Federal agencies threats direct our fishery.

Bruce Fernald, submitted via email, October 4, 2019

I live on Little Cranberry Island a lobster fisherman for the last 45 years license number 4053. I am for switching to purple markings with two exceptions. The three-foot marking is unnecessary it would be painted on and once covered in slime hard to see. Twelve inch in top two fathoms should be perfectly

adequate. Timing of 4-1-20 should be later in the year for the guys who fish all winter. Not much of a chance to reconfigure markings in the winter I could not make it to the hearing on last Wednesday. Just wanted to get my opinion on the record.

Dana Tracy, submitted via email, October 4, 2019

I am submitting my comments on the proposed rule-making for marking vertical lobster lines. First off let me say Thank you for the efforts that have been put forth to defend Maine lobstermen in the 60% vertical line reduction. We all know that there is not a problem in Maine and I suspect that these new gear markings are an effort to prove that. Now, to have a meeting on rule-making in the afternoon in our busy season seems a little absurd. I realize there is a time frame and few of us will do written comments, but here is mine. I am not opposed to the gear marking. What does concern me is the extent of it. A 12 inch mark in three places should be more than sufficient to identify where the rope came from, and the 6 inch green mark to identify the inshore lines somewhat makes sense. However making us make a three foot mark in the top two fathoms is really overkill. If a person can't see a 12 inch mark in the top two fathom what good is two more feet? Also you have picked a color that is not readily available, which makes it more difficult. Weaving a line into the rope is very time consuming and painting it is not a good option as much of the gear overhaul is in wet weather when the rope is more workable. I have no hope that my comments will make any difference. My only hope is that I can deal with the hoops I am made to jump through for a few more years. It is sad that we keep piling stuff on the lobstermen when they are the least threat to the whales, we are just easy targets. Thank you for allowing me to comment.

Terry Savage, received via mail, October 7, 2019

Thank you for this opportunity to comment on the proposal regarding new rope markings for Maine Lobster Fishermen. I am sure my comments will echo many of the other respondents to the new proposal. My comments will be relevant to using paint as a marker medium.

Although I do agree that it is important for Maine to have its own color, and I understand from attending other meetings that purple was the only color available, I believe there are a wide range of purple variations from almost white to nearly black. Even with what one would consider a normal purple color I wonder what color it will change to after being in the water for a season when it is subjected to hauler wear, hot tank cleaning and the other natural occurrences within the fishing industry. I am not familiar with the other colors being used across the fishing industry, but would think there is a color that we could put alongside the red already used so as not to have to try to cover the marks on ropes already in service.

Marking an extra 36 inches of rope in the top two fathoms is overkill. If Maine is going to have a designated color then why is this necessary? My opinion of the six-inch green mark is the same. All this paint would mean, myself along with other countless fishermen will have some of their warps entirely painted purple and green when fishing the shedder season. This absolutely makes no sense. The green mark would also create dedicated warps making moving gear outside the exemption line impossible without changing the entire warp. When fishing traps along the contour of the bottom, there will be traps in the same string that cross the exemption line with some inside and some outside the line. If traps have to be either inside or outside the line to make the marks work, it hampers one's ability to fish their gear effectively. I would ask that these extra markings be removed from the proposal. Expecting all ropes to be marked by April 2020 is not possible. For me personally, my ropes are frozen under the winter snow and my work shop is not big enough to store all the warps and buoys that will need to be painted over the winter. With the weather we have in the Spring, it is impossible to paint rope and have traps ready to set when they are needed. Even using some other type of mark like tape or zip-ties would be difficult as purple is not a color you normally find. More time will be necessary to get all ropes marked as proposed.

I would like to thank everyone for the hard work that has been put into making sure these proposals will work for everyone. Although I disagree with most of them, I am hopeful an agreement can be made

throughout the industry. I would like to add that the industry needs to hold strong against anymore unnecessary regulations. The Maine lobster industry is not the problem and because we caved on the ground line regulation, we are now an easy target for further useless regs.

Representative Genevieve McDonald, House District 134, submitted via email, October 10, 2019

In addition to a 12-inch purple mark at the bottom and midway point of the buoy line, the proposed rule would require both a 12-inch purple mark at the top of the buoy line and a 36-inch purple mark in the top two fathom of the buoy line. This requirement is redundant and one 12-inch purple mark or 36-inch purple mark should be sufficient for marking the top of the buoy line in addition to the 6-inch green mark designating buoy lines fished within the current Exemption Area.

Representative Robert Alley, Sr., House District 138, submitted via email by Dan Shagoury, October 11, 2019

I am a lobster fisherman from Zone A, District 4 and have been lobstering for 61 years. My lobster license is 650-A from Beals Island. I have an issue with the proposed rule. In addition to a 12-inch purple mark at the bottom and midway point of the buoy line, the new rule would require both an additional 12 inch purple mark at the top of the buoy line and a 36 inch purple mark in the top two fathom of the buoy line. This requirement is redundant, as either one 12 inch purple mark or a 36 inch purple mark should be sufficient for marking the top of the buoy line, in addition to the 6 inch green mark designating buoy lines fished within the current Exemption Area.

Richard Smith, submitted via email, October 12, 2019

I am the owner/operator of Bad Behavior, a 42-foot federally permitted lobster vessel operating out of Beals, ME. This is my public comment regarding the Chapter 75 Protected Resources Proposed Rule – Gear Marking. I'll begin with the positive: I applaud the decision to change the gear marking requirement for Maine from red to purple, as this will set us apart from the lobster fishery operating in nearby states. I feel it is imperative we have our own color to prove we have no interaction with the North Atlantic right whale, a species I have never once seen in my decades of lobster fishing. Now for the negative: I feel that in addition to three 12" purple marks at the bottom, middle and top of the rope, the 36" purple mark in the top two fathom is excessive. This rule will be difficult to implement, harder to keep in place, and possibly dangerous. Fishermen who take up their gear for winter will have dry rope to work with. Many will choose to use spray paint to apply their gear markings, and for them, the only problem will be standing around waiting for paint to dry or covering themselves in purple spray paint when coiling their rope. Others will choose to use purple tape for their gear marking, which unravels and will eventually lead to the loss of those marks and more plastic waste in our oceans. Those of us who fish year-round will likely use twine or strands of rope to mark gear. This is very effective with 12" marks. However, weaving in a 36" mark in the top two fathoms of the rope will land between the pickup buoy/balloon and the lower float/balloon/toggle. This will result in a loss of tightness in the lay of the line and a condition known as magging or chicken-necks. Chicken-necks happen when the strands of the line twist apart, then twist upon themselves and stick 90 degrees off the main line anywhere from an inch to over a foot in length. This can catch the hands of fishermen who use their gloved hand to "wipe" the slime buildup from their ropes, and would result in an increased likelihood of fishermen running their hand forcibly into the snatch-block or through the pot hauler. This is too great a risk to take for an additional marking that has zero potential to save the life of a marine mammal. A 12" purple mark at the top of the rope should be sufficient and I request you consider eliminating the proposed 36" mark. Lastly, I'd like to touch upon the ridiculous: This proposal includes a requirement for gear from the head waters to the exemption line to be marked with a 6" green mark, in addition to the three 12" purple marks and one 36" purple mark. The vast majority of gear from head waters to the exemption line is fished in very shoal water. In many cases this would require fishermen to invest extra time, expense, and effort into putting 5 marks, one of which is **3 FEET LONG**, into a rope that is 60 feet or less in length, fished in 20 feet of water, and only has 1 or 2 traps on it. That is absolutely ludicrous. These lines should require no markings. At most, a single 6" green mark in these

lines would be far more than adequate, and I request you consider eliminating all proposed purple marks for gear fished from head waters to the exemption line.

Nathaniel Snow, submitted via email, October 12, 2019

The proposed changes to regulation state that all lines must be marked with “three purple 12-inch marks; one at the top of the buoy line, one midway along the buoy line, and one at the bottom of the buoy line.” This mirrors the current federal requirement under the ALWTRP. However, the proposed regulation also requires a 36-inch purple mark in the top two fathom of buoy line. This 36-inch mark seems unnecessary, as it goes above and beyond what the ALWTRP has previously deemed as necessary for gear marking requirements. Adding a 36-inch mark would require a great amount of additional effort on the part of the fishermen, as well as increased cost, as opposed to maintaining the current federal standard and using only three 12-inch marks. Additionally, the proposed regulation states that it must be placed in the top two fathom of buoy line. This is rather open ended, because it doesn’t state which buoy is used to measure two fathom. Some fishermen run a single buoy, but many run an additional toggle float several fathom below the buoy. Would the 36-inch purple mark be required to be below the toggle float if one existed, or between the buoy and toggle, where there is increased likelihood that it would need to be replaced should a vessel run over the toggle float, cutting off the buoy line? The proposed regulation states that “gear fished from the head of the tide out to the Exemption line would be required to have an additional green mark of a minimum of 6-inches in the top two fathom of buoy line.” As I stated above, the “top two fathom of buoy line” should be more clearly defined as to whether it is measured from the buoy or the toggle float. In the case of the green mark specifically, it should also be made clear as to whether or not the green mark would be required to be removed on gear outside the exemption line. In this case it could become challenging, as many of us fish gear that depending on the day could land on either side of the exemption line. This would mean that some days the gear is properly marked and some days it is improperly marked depending which side of the line gear lands when set back on a particular day. Many of Maine’s coastal fishermen use short buoy lines to fish their traps during summer months. Some of these lines can be as short as 5-10 fathom. Placing a total of 6.5-feet of tracers (36-inch purple, plus three 12-inch purple, plus a 6-inch green) on such a short warp is very different than the current federal requirement which only requires three 12-inch marks on buoy lines that could be in excess of 50 fathom. Perhaps offering an alternative, such as requiring either a) three 12-inch marks at the top middle and bottom, or b) a single 12-inch purple mark for every 10 fathom (or other predetermined length) of buoy line. This would cut down on the number of marks required on short warps, likely saving fisherman both time and expense when it comes to bringing their gear into compliance. Finally, the proposed regulation “removes the requirement for red marks” but does not specify whether or not the existing red marks would need to be removed. According to the ALWTRP, a red and purple mark could be from trap/pot gear placed in Jordon Basin if overlapping LMA1. Therefore, Maine gear with new purple marks added onto the old red marks could be mistakenly identified as gear from Jordon Basin and vice versa.

William Nichols, submitted via email, October 13, 2019

I am a full-time commercial lobsterman out of Stockton Springs, license number 4234. The following are my comments concerning the proposed rope-marking rules. Like most lobstermen, I have never seen a right whale. And not for lack of watching. I am very observant, and there are quite simply no whales in Penobscot Bay where I fish. I would suggest that inshore gear be exempt from the rope marking regulations. But, given that this is likely not an option, I would like to suggest the following: The proposal mentioned 5 marks per buoy line, one of which would have to be three feet. This seems excessive to me, and will add quite a bit of work to getting each warp ready.

There was also the mention of requiring a mark in the middle of the warp. Many of my warps are 60/40 float rope/sink rope. To find the middle, I would have to measure each warp twice; once to cut the float and sink rope, and again to find the middle. I would like to see the requirement for a mark in the middle to be changed to anywhere within the middle third. In closing, I would request that the minimum number of

marks possible be required. A six inch mark at the top and the bottom of each warp would be doable, but five marks, one of them three feet long, is excessive and likely would have minimal if any benefit.

Patrice McCarron, submitted via email, October 14, 2019

The Maine Lobstermen's Association (MLA) strongly supports the Maine Department of Marine Resources (DMR) proposed rulemaking to require unique and expanded gear marking for Maine lobstermen, however, we offer constructive feedback to simplify the requirements. The MLA is Maine's oldest and largest fishing industry association, dedicated to sustaining the lobster resource and the fishermen and communities that depend on it. The MLA has had representation on the Atlantic Large Whale Take Reduction Team (TRT) since it was formed in 1997, and we have proactively represented our members on whale rules since then.

The MLA strongly supports unique gear marking by Maine lobstermen, as well as requiring marking of gear fished in Maine's exempt waters. This approach is strongly aligned with MLA's position on the pending federal whales that National Marine Fisheries Service (NMFS) has been too aggressive in setting a risk reduction target for Maine. Implementing an improved gear marking program for Maine lobster gear will go a long way in helping Maine to make our case that right whale interactions in Maine gear are rare.

Distinguishing Maine lobster gear from lobster gear fished in other states is extremely important in helping us to understand and address the risk our fishery poses to right whales. The MLA has been troubled that NMFS is mandating significant risk reductions for Maine lobstermen that are not supported by the best available data. Under the current gear marking program, Maine lobster gear shares the same gear marking as gear fished in Massachusetts and New Hampshire waters. Nearly half the right whale population feeds in Cape Cod Bay in the winter and a new habitat off of Nantucket, MA is regularly sighted with large numbers of feeding whales. Whales are much more rare along the coast of Maine, and it is important to our members that the state implement a Maine specific gear marking program.

As part of this effort, Maine must require marking for gear fished in the state's exempt waters. This will allow us to rule out this gear as a potential source of the 75% of entanglements that cannot be traced to a fishery and are categorized as unknown gear. In the absence of any gear marking in these waters, Maine will continue to be implicated as a potential source of these entanglements.

The MLA has received much feedback from our members on the DMR's proposed gear marking rules, and the MLA believes that these rules can be simplified and improved. Our members stressed that the state should strive to keep the gear marking regulations as simple as possible to minimize the amount of labor and maintenance to mark gear and increase compliance.

The MLA offers the following specific comments on the proposal. Unique color for Maine

- MLA supports unique marking of vertical lines for Maine to distinguish Maine gear from other fishing gear, and trap/pot gear fished from other states and fishing areas
- MLA does not support keeping red; support purple or any other color that is not currently being used for gear marking
- MLA supports maintaining three 12" marks located at the top, middle and bottom of the vertical line
- In addition, the MLA supports requiring one 12" mark on each lengthener

Marking gear in exempt waters

- MLA will only support gear marking in exempt waters through state-rulemaking. MLA is strongly opposed to the implementation of any measures – gear marking, trawling up, trap limits, etc – in Maine's exempt waters through the Atlantic Large Whale Take Reduction Plan (TRP).
- MLA supports distinguishing gear fished in Maine's exempt waters from gear fished in non-exempt waters only if exempt waters remain exempt from the federal whale plan.

- MLA supports keeping gear marking in Maine's exempt waters as simple as possible because these measures will impact the majority of Maine fishermen and gear.
- MLA does not support requiring a second mark at the top of the line in exempt waters. If gear fished in Maine's exempt vs non-exempt gear is to be distinguished through use of a second mark, the MLA would recommend the second mark instead be required at the top of the line in non-exempt waters. This will affect fewer people.
- MLA recommends that the state consider the following gear marking requirement for Maine's exempt waters:
 - require a 12" purple mark at the top of the line, and then a 12" mark every 10 F for a maximum of three marks.

Second mark for non-exempt waters

- MLA supports requiring a second 6" mark to be added to the top mark on the line for gear fished in Maine's non-exempt waters
 - Requiring an extra tracer on gear fished in non-exempt waters will impact fewer lobstermen and reduce the likelihood that gear with a tracer will be shifted outside of the exemption line in error.
- The extra gear mark should be easily removable, such as a wire tie. The mark could be removed when gear is shifted from non-exempt to exempt waters.
- The additional tracer should not be green or purple as these second marks are already required for gear fished on Jeffrey's Ledge and Jordan's Basin.

Adding a 36" mark in the top 2F of the line

- MLA opposes adding a 36" mark to the top 2F of the line. This mark is redundant with the existing top mark already required. MLA members are also concerned that it will be difficult to maintain a 36" mark within the top 2F of the line because this section of line is often cut off and retied.
- The MLA recommends that the DMR instead require the top 12" mark (of the three required marks) to be placed in the top 2F of the line.
- The MLA does not support use of this mark as a replacement for hauling gear to check for compliance of the gear marking requirement.
- If a 36" mark is required in the top of the buoy line, MLA's support for its inclusion is contingent upon the following:
 - It should be required in the top 3F of the line to allow for cutting and retying of this section of line.
 - This mark must replace the 12" gear mark required at the top of the line.
 - Because this mark is required to inform the origin of entangling fishing gear, Maine must have assurance from NMFS that any gear found on a whale without this mark would be determined as not originating from Maine.

Implementation

- Move to June 1 to give guys more time to change over gear

DMR Response to Comments

Differentiation of gear inside or outside the Exemption Area:

A comment was received that there should not be a marking requirement designed to differentiate gear fished within the Exemption Area from gear fished outside the Exemption Area, because all Maine fishermen should be treated the same. The purpose of differentiating this gear is to help delineate entanglement risk in areas that are exempt from the Atlantic Large Whale Take Reduction Plan (ALWTRP) due to low risk. By marking that gear differently, over time we will have more information to inform any new regulatory changes proposed in the ALWTRP and increase our ability to advocate for the maintenance of the Exemption Area.

Basic Marking Requirements Inside the Exemption Area:

Several commenters stated that four marks is too many to expect to have on inshore gear fished in shallow water. One commenter stated that one mark should suffice for inshore gear. The Department appreciates that having to mark gear inside the Exemption Area is a significant change. The reason for proposing four marks was to mirror what the Department anticipates will be required outside the Exemption Area by the federal regulations. Each additional mark is believed to increase the likelihood that any gear which is retrieved from an entanglement will include a mark that will allow the correct identification of the fishery. However, the Department understands that requiring four marks (top, middle, and bottom, as well as an additional 36-inch mark in the top two fathom) is excessive for gear fished in shallow water. For that reason, the Department has amended the proposed rule to allow the 36-inch mark in the top two fathom to serve as the top mark. As a result, only three marks will be required in the Exemption Area.

A comment was received proposing to require a 12-inch purple mark at the top of the line, and then a 12 inch mark every 10 fathom for a maximum of three marks. The Department considered this proposal, but the input for Patrol has been that marking requirements based on depth are difficult to enforce. For this reason, the rule was maintained as proposed as requiring marks at the top, middle and bottom of the buoy line.

Basic Marking Requirements Outside the Exemption Area:

Similarly, some commenters stated that they did not see a reason to have both a top mark and a 36-inch mark in the top two fathom in the area outside the Exemption Area and urged the Department to adopt the most simple marking protocol possible. One commenter stated that this proposal goes beyond the current federal requirements and the State should not go beyond what is presently in the ALWTRP. However, in this instance the Department is aware that there is a strong likelihood that the federal rule will contain this requirement. The NOAA Disentanglement Team has indicated publicly that they believe the 36-inch mark in the top two fathom is a necessary improvement to the current gear marking requirements in the ALWTRP and will aid enforcement.

The reason for advancing the gear marking proposal in advance of the federal rule is to demonstrate Maine's commitment to expeditiously implement robust gear marking. The Department does not want to adopt a regulation that we anticipate will be in conflict with the federal rule; this would require fishermen to change their marking again when the federal rule is published. For that reason, the Department will maintain the proposed requirement for four marks: one at the top, middle and bottom, and an additional 36-inch mark in the top two fathom of the buoy line.

Mark in the Top Two Fathom:

One commenter stated that the top mark should not have to be in the top two fathom. They stated it should be further down, in the event that the top of the line is lost to boat traffic. The Department understands this concern, but as above, is mindful that the federal rule is likely to require the 36-inch mark to be within the top two fathom and therefore is maintaining this requirement from the proposed rule. NOAA Fisheries wants the mark to be visible at the surface to vessels and disentanglers.

Another commenter questioned what is meant by the top two fathom. The top two fathom should be measured from the top of the main buoy line, regardless of whether an additional toggle buoy is used.

Secondary Green Mark Proposed for Exemption Area:

A commenter proposed that the secondary green mark should not be required within the Exemption Area, but instead *outside* the Exemption Area to distinguish gear. This would achieve the same goal of distinguishing gear fished in the Exemption Area, impact fewer lobstermen, and reduce the potential that gear with the extra mark will be shifted outside of the Exemption Area in error. The Department agrees with these observations and has amended the proposed rule accordingly. The additional green mark will be required for gear fished outside the Exemption Area and the Department has clarified the rule to specify that using a green mark inside the Exemption Area is prohibited.

One commenter asked if a fisherman adds lengtheners, do they have to remove the green mark each time and move it to the top two fathom, or can they add green marks? Fishermen can have more than one green mark, but must maintain a green mark in the top two fathom outside the Exemption Area. A fisherman may not have any green marks inside the Exemption Area. The requirement to maintain a green mark can be met by using a cable tie as the marking device.

Implementation Date:

Several commenters stated that the implementation date should be moved to a later date from April 1 to give fishermen sufficient time to bring their gear in and mark it. The Department had originally selected April 1 to balance providing fishermen with enough time to mark the gear while also having the gear marking changed by the time that right whales may begin transiting the Gulf of Maine. However, in consideration of the amount of work required to comply with this regulation and the availability of materials necessary for fishermen to comply, as well as the variability in fishing practices, the Department agrees to shift the implementation date from April 1 to September 1 to ensure that all fishermen, including those who fish year round, have sufficient time to comply and has amended the proposed rule accordingly.

Mark Colors:

There were several comments regarding the specific colors selected for the gear marking requirements. One comment was that the additional mark should not be green or purple, as those color combinations are already in use for gear fished on Jeffrey's Ledge and Jordan Basin. The Department is aware of those current requirements, but has discussed this conflict with NOAA Fisheries and they have indicated that the existing distinct marking requirements in those areas will be amended in the federal regulation.

Other commenters observed that Maine has the most fishermen, so should be able to keep the current red mark, while other states change their color. There was also a comment regarding the potential for injury associated with marking when fishermen splice the tracer into their line. The purpose of changing the color of the mark is to make absolutely sure that there is a Maine-only mark, and no other gear can be mistakenly attributed to a Maine fisherman. Maine cannot compel other states to change their color, we can only proactively select another color that no other fishery is using. In reviewing the other colors used for other fisheries and gear types, the only color that is available that would achieve the objective of uniquely identifying Maine gear is purple. Fishermen may mark the gear using whatever method (splicing, tape, paint, etc.) with which they are most comfortable.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6579 web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 75 Protected Resources Regulations

STATUTORY AUTHORITY: 12 M.R.S.A. §6171

DATE AND PLACE OF PUBLIC HEARING(S): October 2, 2019 4:00 PM, DMR Offices Marquardt Building Room 118

COMMENT DEADLINE: October 14, 2019

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)]

This regulation is intended to replace an existing gear mark (red) used only in the sliver area and federal waters with a Maine specific gear mark (purple) that will be used in all Maine coastal waters, and an additional mark in the top two fathom of endline beginning by April 1, 2020. It will also require any gear fished within the Exemption area to have an additional green mark.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES ___ NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)]

The rule will require all persons fishing lobster and other trap/pot gear to mark their buoy lines in accordance with the regulation by April 1, 2020.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B]: The Department considered the April 2019 Atlantic Large Whale Take Reduction Team meeting, information provided by NOAA Fisheries regarding any colors for gear marking not already in use, and input from members of the Maine lobster industry provided at meetings held in June and July 2019.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)] Persons fishing lobster and trap/pot gear in Maine's coastal waters will bear the costs associated with marking their gear as the regulation requires.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used.