

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 75 Protected Resources- Gear Marking Exception

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

CONCISE SUMMARY:
This rule creates an exception to current requirements to mark the buoy lines for trap/pot gear with either three or four purple marks, depending on where the gear is fished. Buoy lines of 100 feet or less in length would be required to have only two purple marks, one of 36 inches in the top two fathom of the line, and one of 12 inches at the bottom of the line.

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

AGENCY CONTACT PERSON: Amanda Ellis
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Please approve bottom portion of this form and assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____						DATE: _____
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010	13A	1120	10	4946	regulation	

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

DEPARTMENT OF MARINE RESOURCES

Chapter 75 – Protected Resources

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.

Exception: Vertical lines less than 100 ft in length may be marked with only two (2) purple marks: one at the top of 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 the buoy line. The bottom mark 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.

Exception: Vertical lines less than 100 ft in length may be marked with only two (2) purple marks: one at the top of 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 the buoy line. The bottom mark 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.

- (c) Unless marked as required by (b) in advance of September 1, 2020, 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) The attachment of buoys, toggles or other floatation devices is prohibited on ground lines.
- (f) Ground lines. All ground lines must be composed entirely of sinking line.
- (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.
- (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.
- (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.

Exception: Vertical lines less than 100 ft in length may be marked with only two (2) purple marks: one at the top of 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 the buoy line. The bottom mark 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.

- (c) Unless marked as required by (b) in advance of September 1, 2020, 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.

- (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) 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.
- (f) The attachment of buoys, toggles or other floatation devices is prohibited on ground lines.
- (g) Ground lines. All ground lines must be composed entirely of sinking line.
- (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.
- (i) Fishermen are encouraged, but not required, to maintain knot-free buoy lines.

Basis Statement

This rule creates an exception to current requirements to mark the buoy lines for trap/pot gear with either three or four purple marks, depending on where the gear is fished. Buoy lines of 100 feet or less in length would be required to have only two purple marks, one of 36 inches in the top two fathom of the line, and one of 12 inches at the bottom of the line. This modification of the existing rule is intended to reduce the impact of the gear marking requirements on fishermen fishing in depths where the likelihood of whales interacting with lobster gear is extremely low.

Summary of Comments

Notice of this rulemaking appeared on February 19, 2020 in the five major daily newspapers as published by the Secretary of State. On February 19, 2020, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. No public hearings were scheduled. The comment period closed March 20, 2020.

Written Comments

Steve Kirkpatrick, received via email, March 14, 2020

I don't why you can't keep it simple, use fathoms! That's how we measure rope on the boat. Keep all of the marks in state waters purple and do away with the exemption line because obviously we are no longer exempt. I chose every 12 fathoms because I use 6 fathom and 12 fathom lengtheners so that would work just right for "me". 0-12 fathom, 1ft mark on bottom 2ft mark on top and then add another foot to the top for each consecutive 12 fathoms because we add rope as we deepen our strings. 0-24 fathom would be: 1ft mark on bottom, 2ft mark at 12 fathom and 3ft mark on top. 0-36 fathom: 1ft mark on bottom, 2ft mark at 12 fathom and 3ft mark at 24 fathom and 4ft mark at 36 fathom. OK, do you see what I'm doing here? Do I need to spell it out further? Well there you go!

Nate House, received via email, March 12, 2020

I wish to formally request the Department of Marine Resources waive rope markings on gear fished with less than 50ft of rope consisting of only sink rope. This would help support the smaller, younger fisherman just starting out, hauling in the summer time out of a little skiff. If 50ft is to long of a length, please reconsider either waiving on lengths under 40 or 35 feet.

Amos Kelly, received via email, March 4, 2020

is this a rule now or a proposal that may happen-----I myself fish all shoal water 10 feet to 120 feet in frenchmans bay, seems like a waste of time and money given my location .I fish 400 singles in no more than 25 feet of water the whole season. My opinion only but after never seeing a whale of any kind for 50 years do your research people expect the right whale to change there migration route from global warming. My e-mail said to comment and its really

hard to make a good point or case against a proposal that makes no sense at all. My only thought that comes to me with the people making this rule is----- you can't fix stupid

William Morrill, submitted via email, February 21, 2020

This needs to go one step further. I fish in less than 50 feet of water in Casco Bay in Zone F. I have been fishing these waters for over 50 years and I have never seen a whale in less than 50 feet of water. There is absolutely no need for markings in water that shallow, it just makes no sense. This is just another way you are trying to squeeze out the smaller boats.

Anthony Beal, submitted via email, February 19, 2020

I'm a seasonal bay fisherman out of Beals (A4). My license number is 6102. I hold 800 trap tags and all my gear is single traps less than 100 feet. It is ludicrous to consider whale marking my entire gang. This seems ridiculous to me especially since I fish only 2.5 months a year. Please note that I oppose any marking within state waters, especially the majority of my traps that fall below 60 feet of rope. Thank you for the opportunity to offer my input.

DMR Response to Comments:

Use of Fathoms:

One commenter suggested using fathoms. The exemption applies to vertical lines 100 feet or less in length, which is 16.6 fathom. Therefore, vertical lines less than 17 fathom would not need the third mark.

Basic Marking Requirements:

Some commenters questioned the existing requirement to mark their gear, or suggested exceptions to all gear marking in shallow waters. In November 2019, the Department implemented robust gear marking requirements, which required the marking of all lobster gear, including inshore gear fished in shallower waters. The overall intent of those changes was to demonstrate Maine's commitment to implementing gear marking. The Department also did not want to adopt any rule that may conflict with the federal rule, which would require fishermen to change their marking again when the federal rule is published. However, recognizing that marking inshore gear fished in shallower waters was a significant change, the Department proposed to further reduce the marking requirements for vertical lines 100 feet or less in length, while still requiring gear marking.

Implementing further exceptions to the overall requirement to mark the gear would indicate to federal regulators that the Department is no longer committed to implementing robust gear marking. The purpose of the gear marking is to be able to document as much as possible that Maine gear is not responsible for entangling right whales. If there is a portion of Maine gear that is not marked at all, we cannot achieve that objective.

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) 624-6573; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 75 Protected Resources- Gear Marking Exception

STATUTORY AUTHORITY: 12 MRS 6171

DATE AND PLACE OF PUBLIC HEARING(S): No public hearing scheduled

COMMENT DEADLINE: March 20, 2020

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)] The Department has received input from lobster fishermen that the current gear marking requirements are too onerous for gear being fished in shallow coastal waters or up in rivers. The Department has determined that two marks is reasonable for vertical lines 100 feet or less in length.

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

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)] The rule will provide an exception from current gear marking requirements to allow fewer marks than currently required.

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]: Input from lobster fishermen received at the Zone Council meetings in January and February.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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)]