

# NOTICE OF AGENCY RULE-MAKING ADOPTION

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 75 Protected Resources

**ADOPTED RULE NUMBER:**

**CONCISE SUMMARY:** The Department proposed this change in rule to address the federal vertical line regulations (otherwise known as the "whale rules"), which were published by National Marine Fisheries Service (NMFS) on June 27, 2014, and which go into effect in Maine on June 1, 2015. This rule-making is necessary for consistency and compliance with the federal requirements of the Atlantic Large Whale Take Reduction Plan (ALWTRP) Final Rule in accordance with the Marine Mammal Protection Act and the Endangered Species Act. With the new whale rules, there will be a minimum number of lobster traps per trawl based on the different lobster zones and distance from shore to reduce the number of buoy lines in the water column. The various changes apply to areas of Maine's Pocket Waters, inside the Maine Sliver Area and Federal Waters. The Department is adopting adopt additional gear marking, a new 6-mile line, minimum trawl lengths and some island buffers in regulation for compliance and consistency with the federal whale rules.

As authorized by 12 M.R.S. § 6171, the Commissioner of Marine Resources adopts this regulation.

**EFFECTIVE DATE:** May 13, 2015

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DEPARTMENT OF MARINE RESOURCES

Chapter 75 – Protected Resources

75.01 Definitions

A. In addition to the definitions set forth in 1 M.R.S.A. §§71 and 72 and 12 M.R.S.A. §6001, the following definitions shall apply in this chapter.

1. “Area 1” means EEZ Nearshore Management Area 1, for Lobster Management Areas, that is defined by the area, including state and federal waters that are near-shore in the Gulf of Maine, bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point on Cape Cod:

Point	Latitude	Longitude
A.....	43 deg. 58[min] N.	67 deg. 22[min] W.
B.....	43 deg. 41[min] N.	68 deg. 00[min] W.
C.....	43 deg. 12[min] N.	69 deg. 00[min] W.
D.....	42 deg. 49[min] N.	69 deg. 40[min] W.
E.....	42 deg. 15.5[min] N.	69 deg. 40[min] W.
G.....	42 deg. 05.5[min] N.	70 deg. 14[min] W.
G1.....	42 deg. 04.25[min] N.	70 deg. 17.22[min] W.
G2.....	42 deg. 02.84[min] N.	70 deg. 16.1[min] W.
G3.....	42 deg. 03.35[min] N.	70 deg. 14.2[min] W.

Along the coastline of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to point A. (50 CFR 697.18(a))

2. “ALWTRP” stands for the federal Atlantic Large Whale Take Reduction Plan. The federal citation for these rules is 50 CFR Wildlife and Fisheries, CHAPTER II National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, Subchapter C Marine Mammals, Part 229 Authorization for Commercial Fisheries Under the Marine Mammal Protection Act of 1972. (50 CFR Part 229, 64 FR 7552, effective February 16, 1999) Also see <http://www.noro.noaa.gov/whaletrp/plan/index.htm>.  
<http://www.greateratlantic.fisheries.noaa.gov/Protected/whaletrp/>

3. NOAA Fisheries Assistant Administrator contact information: ~~National Oceanic and Atmospheric Administration, Dept. of Commerce~~  
~~National Marine Fisheries Service, Northeast Regional Office-~~  
~~Fisheries Assistant Administrator~~  
~~One Blackburn Drive~~  
~~Gloucester, Massachusetts 01930-2298~~

NOAA Fisheries Service  
Greater Atlantic Regional Fisheries Office  
55 Great Republic Drive  
Gloucester, MA 01930-2276

Web site: <http://www.noro.noaa.gov/whaletrp/>  
<http://www.greateratlantic.fisheries.noaa.gov/Protected/whaletrp/>

4. “State of Maine Exemption Line” or “Exemption Line” means the area landward, to within the rise and fall of the tide, of a line which connects the following 25 numbered coordinates from the Maine/New Hampshire Border to Maine/Canadian Border:

1. Odiornes Pt. Portsmouth NH:	43° 02.55' N	70° 43.33' W
2. R 2KR Whistle - Kittery Point:	43° 02.93' N	70° 41.47' W
3. N 2MR - Murray Rock:	43° 04.06' N	70° 36.70' W
4. RW CP Whistle - Cape Porpoise:	43° 20.23' N	70° 23.64' W*
5. RW WI Whistle - Wood 1	43° 27.63' N	70° 17.48' W*
6. G 1 - East Hue and Cry:	43° 31.94' N	70° 08.68' W
7. RG N BS - Bulwark Shoal:	43° 36.04' N	70° 03.98' W

8. R 20ML Bell - Mile Ledge:	43° 41.44' N	69° 45.27' W
9. R 2BR Bell - Bantam Rock:	43° 43.64' N	69° 37.58' W
10. GR C PL - Pemaquid Ledge:	43° 48.96' N	69° 31.15' W
11. R 2 OM Whistle - Old Man Ledge:	43° 50.28' N	69° 18.86' W
12. G 5TB Bell - Two Bush Channel:	43° 56.72' N	69° 04.89' W
13. R 2A Bell - Old Horse Ledge:	43° 59.83' N	68° 50.06' W
14. R 2 Bell - Roaring Bull Ledge, Isle Au Haut:	43° 59.36' N	68° 37.95' W
15. Southern point Great Duck I:	44° 08.36' N	68° 14.75' W
16. R 8BI Whistle - Baker I:	44° 13.55' N	68° 10.71' W
17. R 2S Bell - Schoodic I:	44° 19.08' N	68° 02.05' W
18. R N 2 - Petit Manan I:	44° 21.66' N	67° 51.78' W
19. R 2SR Bell - Seahorse Rock, west of Great Wass I:	44° 25.74' N	67° 38.39' W
20. Freeman Rock - east of Great Wass I:	44° 27.77' N	67° 32.86' W
21. Obstruction - southeast of Cutler:	44° 37.70' N	67° 09.75' W
22. R 28M Whistle - Baileys Mistake:	44° 45.51' N	67° 02.87' W
23. R N 2 - Morton Ledge:	44° 47.36' N	66° 59.25' W
24. G 1 Whistle - West Quoddy Head:	44° 48.64' N	66° 56.43' W
25. R N 2 - Quoddy Narrows:	44° 49.67' N	66° 57.77' W

\* Note: These US Coast Guard buoys have been “de-established”, i.e., they are not being replaced; however for purposes of these regulations their coordinates are being used without their former marker.

5. “Maine Sliver Area” or the “Sliver” means the area between the State of Maine Exemption Line and the 3-mile limit, as identified on National Oceanographic and Atmospheric Administration nautical charts.

6. The Maine Six-Mile Line waters are defined for a minimum number of traps per trawl and are as follows:

The Maine Six-Mile Line is a line connecting the following points (Machias Seal to Isles of Shoals).

- 44°31.98' N. lat., 67°9.72' W. long (Machias Seal)
- 44°3.42' N. lat., 68°10.26' W. long (Mount Desert Island)
- 43°40.98' N. lat., 68°48.84' W. long (Matinicus)
- 43°39.24' N. lat., 69°18.54' W. long (Monhegan)
- 43°29.4' N. lat., 70°5.88' W. long (Casco Bay)
- 42°55.38' N. lat., 70°28.68' W. long (Isles of Shoals)

7. The Maine Pocket Waters are defined for a minimum number of traps per trawl and are as follows:

Maine Pocket Waters

- West of Monhegan Island in the area north of the line 43°42.17' N. lat., 69°34.27' W. long and 43°42.25' N. lat., 69°19.3' W. long
- East of Monhegan Island in the area located north of the line 43°44' N. lat., 69°15.08' W. long and 43°48.17' N. lat., 69°8.02' W. long
- South of Vinalhaven Island in the area located west of the line 43°52.31' N. lat., 68°40' W. long and 43°58.12' N. lat., 68°32.95' W. long
- South of Bois Bubert Island in the area located northwest of the line 44°19.27' N. lat., 67°49.5' W. long and 44°23.67' N. lat., 67°40.5' W. long

8. Trap trawl regulatory requirements relative to the three-mile line shall be based on the “three nautical mile line” as depicted on NOAA nautical charts.

9. Trap trawl regulatory requirements relative to the twelve-mile line shall be based on the “territorial sea and contiguous zone” line as depicted on NOAA nautical charts.

## 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

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 ~~25.20~~ 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.

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 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) ~~Buoy lines must be marked with a red, 4-inch mark midway on the buoy line.~~  
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.
- (c) The attachment of buoys, toggles or other floatation devices is prohibited on ground lines.
- (d) Ground lines. All ground lines must be composed entirely of sinking line.
- (e) 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) 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) 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) ~~Buoy lines must be marked with a red, 4-inch mark midway on the buoy line.~~  
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.
- (c) 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) The attachment of buoys, toggles or other floatation devices is prohibited on ground lines.
- (e) Ground lines. All ground lines must be composed entirely of sinking line.
- (f) 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) Fishermen are encouraged, but not required, to maintain knot-free buoy lines.

5. Minimum Number of Traps Per Trawl

In Maine, trap trawl requirements are based on the enforcement lines defined in Chapter 75.01 and the Maine lobster management zones defined in Chapter 25.94. See each individual management area for details on these requirements:

<u>Management Area</u>	<u>Minimum Number of Traps Per Trawl</u>
<u>Zones A-G (Exemption Line to the 3-mile line)</u>	<u>2 (no singles allowed)</u>
<u>Maine Pocket Waters as defined in Chapter 75.01 (A)(7)*</u>	<u>2 (no singles allowed)</u>
<u>Zones A-G (3-mile line – 6-mile line)*</u>	<u>3</u>
<u>Zones A-C (6-mile line – 12-mile line)*</u>	<u>5</u>
<u>Zones D-G (6-mile line – 12-mile line)*</u>	<u>10</u>
<u>Zones A-E (beyond 12 mile-line)</u>	<u>15</u>
<u>Zones F-G (beyond 12 mile-line)</u>	<u>15 (Mar 1-Oct 31)</u>
	<u>20 (Nov 1-Feb 28/29)</u>

\* The Six-Mile Line and Pocket Waters are defined in Chapter 75.01 (A) (6 and 7). The three-mile and 12-mile lines are also established in Chapter 75.01 (A) (8 and 9).

Exception: Waters within ¼ mile of Monhegan Island, Matinicus Island and Ragged Island (Criehaven) are exempt from the new minimum trap per trawl requirements. Single traps are permitted within ¼ mile from these three islands.

75.03 Gillnet Gear Restrictions

A. The following gillnet gear restrictions shall apply:

1. Sliver Area and Federal waters

All persons who fish gillnet gear in the Maine Sliver Area, shall comply with the following requirements for the ALWTRP:

- (a) No floating line at the surface.

- (b) No wet storage of gear over 30 days.
- (c) Buoy lines must be marked with a green, 4-inch mark midway on the buoy line.
- (d) The license-holder's name, homeport, and Commercial Pelagic and Anadromous Fishing license for gillnet fishing must be clearly displayed on every marking buoy.
- (e) All buoys, floatation and/or weighted devices must be attached to the buoy line with a weak link having a maximum breaking strength no greater than 1,100 pounds (498.95 kg).
- (f) All gillnets, regardless of the number of net panels, must be anchored with the holding power of not less a 22-lb Danforth-style anchor at each end of the net string (must be burying anchor; no dead weights).
- (g) Each net panel must be configured with five or more weak links, depending on the panel length, with a breaking strength no greater than 1,100 pounds (498.95 kg). The weak link placement must meet one of two configurations:
  - (1) Configuration 1:
    - For all variations in panel size:
      - One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and
      - One weak link must be placed as close as possible to each end of the net panels on the floatline.
    - For net panels 50 fathoms or less in length: One weak link must be placed in the center of the floatline.
    - For net panels greater than 50 fathoms: One weak link must be placed at least every 25 fathoms along the floatline.
  - (2) Configuration 2:
    - For all variations in panel size:
      - One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and
      - One weak link must be placed between floatline tie-loops between net panels; and
      - One weak link must be placed where the floating tie-loops attach to the bridle, buoy line, or groundline at each end of the net string.
    - For net panels 50 fathoms or less in length: One weak link must be placed in the center of the floatline.
    - For net panels greater than 50 fathoms: One weak link must be placed at least every 25 fathoms along the floatline.
  - (3) Exceptions: Individual weak links are not required in locations where rope of appropriate breaking strength is used. Additionally, if no up and down line is present then weak links are not required at that location.

# Basis Statement

## Chapter 75 Protected Resources

The Department proposed this change in rule to address the federal vertical line regulations (otherwise known as the “whale rules”), which were published by National Marine Fisheries Service (NMFS) on June 27, 2014, and which go into effect in Maine on June 1, 2015. This rule-making is necessary for consistency and compliance with the federal requirements of the Atlantic Large Whale Take Reduction Plan (ALWTRP) Final Rule in accordance with the Marine Mammal Protection Act and the Endangered Species Act. With the new whale rules, there will be a minimum number of lobster traps per trawl based on the different lobster zones and distance from shore to reduce the number of buoy lines in the water column. The various changes apply to areas of Maine’s Pocket Waters, inside the Maine Sliver Area and Federal Waters. The Department is adopting additional gear marking, a new 6-mile line, minimum trawl lengths and some island buffers in regulation for compliance and consistency with the federal whale rules.

The various changes apply to trap/pot fisheries in areas of Maine’s Pocket Waters, inside the Maine Sliver Area and Federal Waters. Existing enforcement personnel will continue to monitor compliance during their routine patrols.

A public hearing was held on April 6, 2015 in Hallowell and no members of the public attended. Notice of this proposed rulemaking was given on March 18, 2015 on the following: the DMR website, the DMR rulemaking interested parties e-mail list, the DMR Advisory Council via e-mail, the Secretary of State’s proposed rulemaking website, five daily newspapers, and via GovDelivery to all lobster license holders.

No comments were received on the proposed rule.

# Rule-Making Fact Sheet

(5 M.R.S.A., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Kevin J. Rousseau, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; web address: [www.maine.gov/dmr/rulemaking](http://www.maine.gov/dmr/rulemaking); e-mail [dmr.rulemaking@maine.gov](mailto:dmr.rulemaking@maine.gov)

CHAPTER NUMBER AND RULE: Chapter 75 Protected Resources

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING: April 6, 2015. 6 p.m. Room 106 Natural Resources Services Center, Hallowell.

COMMENT DEADLINE: April 16, 2015

PRINCIPAL REASON OR PURPOSE FOR THIS RULE: The Department proposed this change in rule to address the federal vertical line regulations (otherwise known as the “whale rules”), which were published by National Marine Fisheries Service (NMFS) on June 27, 2014, and which go into effect in Maine on June 1, 2015. This rule-making is necessary for consistency and compliance with the federal requirements of the Atlantic Large Whale Take Reduction Plan (ALWTRP) Final Rule in accordance with the Marine Mammal Protection Act and the Endangered Species Act. With the new whale rules, there will be a minimum number of lobster traps per trawl based on the different lobster zones and distance from shore to reduce the number of buoy lines in the water column. The various changes apply to areas of Maine’s Pocket Waters, inside the Maine Sliver Area and Federal Waters. The Department is adopting additional gear marking, a new 6-mile line, minimum trawl lengths and some island buffers in regulation for compliance and consistency with the federal whale rules.

ANALYSIS AND EXPECTED OPERATION OF THE RULE: The various changes apply to trap/pot fisheries in areas of Maine’s Pocket Waters, inside the Maine Sliver Area and Federal Waters.

FISCAL IMPACT OF THE RULE: Existing enforcement personnel will monitor compliance during their patrols.