

## § 224.102

[79 FR 20814, Apr. 14, 2014, as amended at 79 FR 31227, June 2, 2014; 79 FR 38241, July 3, 2014]

### § 224.102 Permits for endangered marine and anadromous species.

No person shall take, import, export, or engage in any activity prohibited by section 9 of the Act involving any marine species that has been determined to be endangered under the Endangered Species Conservation Act of 1969 or the Act, and that is under the jurisdiction of the Secretary, without a valid permit issued pursuant to part 222, subpart C of this chapter.

### § 224.103 Special prohibitions for endangered marine mammals.

(a) *Approaching humpback whales in Hawaii.* Except as provided in part 222, subpart C, of this chapter (General Permit Procedures), it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of the Islands of Hawaii, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(1) Operate any aircraft within 1,000 feet (300 m) of any humpback whale;

(2) Approach, by any means, within 100 yard (90 m) of any humpback whale;

(3) Cause a vessel or other object to approach within 100 yd (90 m) of a humpback whale; or

(4) Disrupt the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of breeding, nursing, or resting activities, attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movement; or the abandonment of a previously frequented area.

(b) *Approaching humpback whales in Alaska—(1) Prohibitions.* Except as provided under paragraph (b)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to com-

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mit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of Alaska, or within inland waters of the state, any of the acts in paragraphs (b)(1)(i) through (b)(1)(iii) of this section with respect to humpback whales (*Megaptera novaeangliae*):

(i) Approach, by any means, including by interception (i.e., placing a vessel in the path of an oncoming humpback whale so that the whale surfaces within 100 yards (91.4 m) of the vessel), within 100 yards (91.4 m) of any humpback whale;

(ii) Cause a vessel or other object to approach within 100 yards (91.4 m) of a humpback whale; or

(iii) Disrupt the normal behavior or prior activity of a whale by any other act or omission, as described in paragraph (a)(4) of this section.

(2) *Exceptions.* The following exceptions apply to this paragraph (b), but any person who claims the applicability of an exception has the burden of proving that the exception applies:

(i) Paragraph (b)(1) of this section does not apply if an approach is authorized by the National Marine Fisheries Service through a permit issued under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar authorization.

(ii) Paragraph (b)(1) of this section does not apply to the extent that a vessel is restricted in her ability to maneuver and, because of the restriction, cannot comply with paragraph (b)(1) of this section.

(iii) Paragraph (b)(1) of this section does not apply to commercial fishing vessels lawfully engaged in actively setting, retrieving or closely tending commercial fishing gear. For purposes of this paragraph (b), commercial fishing means taking or harvesting fish or fishery resources to sell, barter, or trade. Commercial fishing does not include commercial passenger fishing operations (i.e. charter operations or sport fishing activities).

(iv) Paragraph (b)(1) of this section does not apply to state, local, or Federal government vessels operating in the course of official duty.

(v) Paragraph (b)(1) of this section does not affect the rights of Alaska Natives under 16 U.S.C. 1539(e).

(vi) These regulations shall not take precedence over any more restrictive conflicting Federal regulation pertaining to humpback whales, including the regulations at 36 CFR 13.65 that pertain specifically to the waters of Glacier Bay National Park and Preserve.

(3) *General measures.* Notwithstanding the prohibitions and exceptions in paragraphs (b)(1) and (2) of this section, to avoid collisions with humpback whales, vessels must operate at a slow, safe speed when near a humpback whale. “Safe speed” has the same meaning as the term is defined in 33 U.S.C. 2006 and the International Regulations for Preventing Collisions at Sea 1972 (see 33 U.S.C. 1602), with respect to avoiding collisions with humpback whales.

(c) *Approaching right whales—(1) Prohibitions.* Except as provided under paragraph (c)(3) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, to solicit another to commit, or cause to be committed any of the following acts:

(i) Approach (including by interception) within 500 yards (460 m) of a right whale by vessel, aircraft, or any other means;

(ii) Fail to undertake required right whale avoidance measures specified under paragraph (c)(2) of this section.

(2) *Right whale avoidance measures.* Except as provided under paragraph (c)(3) of this section, the following avoidance measures must be taken if within 500 yards (460 m) of a right whale:

(i) If underway, a vessel must steer a course away from the right whale and immediately leave the area at a slow safe speed.

(ii) An aircraft must take a course away from the right whale and immediately leave the area at a constant airspeed.

(3) *Exceptions.* The following exceptions apply to this section, but any person who claims the applicability of an exception has the burden of proving that the exception applies:

(i) Paragraphs (c)(1) and (c)(2) of this section do not apply if a right whale approach is authorized by the National Marine Fisheries Service through a

permit issued under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar authorization.

(ii) Paragraphs (c)(1) and (c)(2) of this section do not apply where compliance would create an imminent and serious threat to a person, vessel, or aircraft.

(iii) Paragraphs (c)(1) and (c)(2) of this section do not apply when approaching to investigate a right whale entanglement or injury, or to assist in the disentanglement or rescue of a right whale, provided that permission is received from the National Marine Fisheries Service or designee prior to the approach.

(iv) Paragraphs (c)(1) and (c)(2) of this section do not apply to an aircraft unless the aircraft is conducting whale watch activities.

(v) Paragraph (c)(2) of this section does not apply to the extent that a vessel is restricted in her ability to maneuver and, because of the restriction, cannot comply with paragraph (c)(2) of this section.

(d) *Special prohibitions relating to endangered Steller sea lion protection.—(1) General Prohibitions.* The following regulatory provisions shall apply to the western population of Steller sea lions:

(i) *No discharge of firearms.* Except as provided in paragraph (d)(2) of this section, no person subject to the jurisdiction of the United States may discharge a firearm at or within 100 yards (91.4 meters) of a Steller sea lion west of 144 °W longitude. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(ii) *No approach in buffer areas.* Except as provided in paragraph (d)(2) of this section:

(A) No owner or operator of a vessel may allow the vessel to approach within 3 nautical miles (5.5 kilometers) of a Steller sea lion rookery site listed in paragraph (d)(1)(iii) of this section;

(B) No person may approach on land not privately owned within one-half statutory mile (0.8 kilometers) or within sight of a Steller sea lion rookery site listed in paragraph (d)(1)(iii) of this section, whichever is greater, except on Marmot Island; and

(C) No person may approach on land not privately owned within one and

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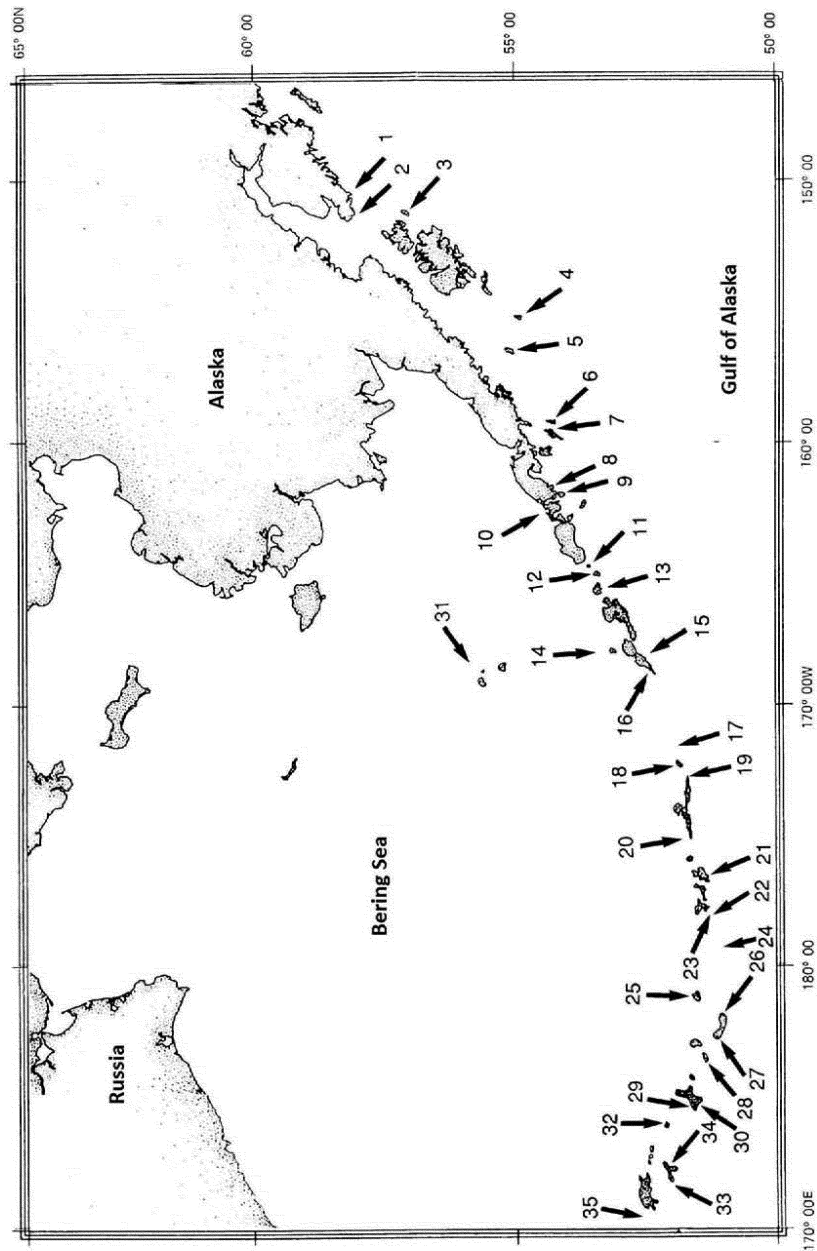
one-half statutory miles (2.4 kilometers) or within sight of the eastern shore of Marmot Island, including the Steller sea lion rookery site listed in paragraph (d)(1)(iii) of this section, whichever is greater.

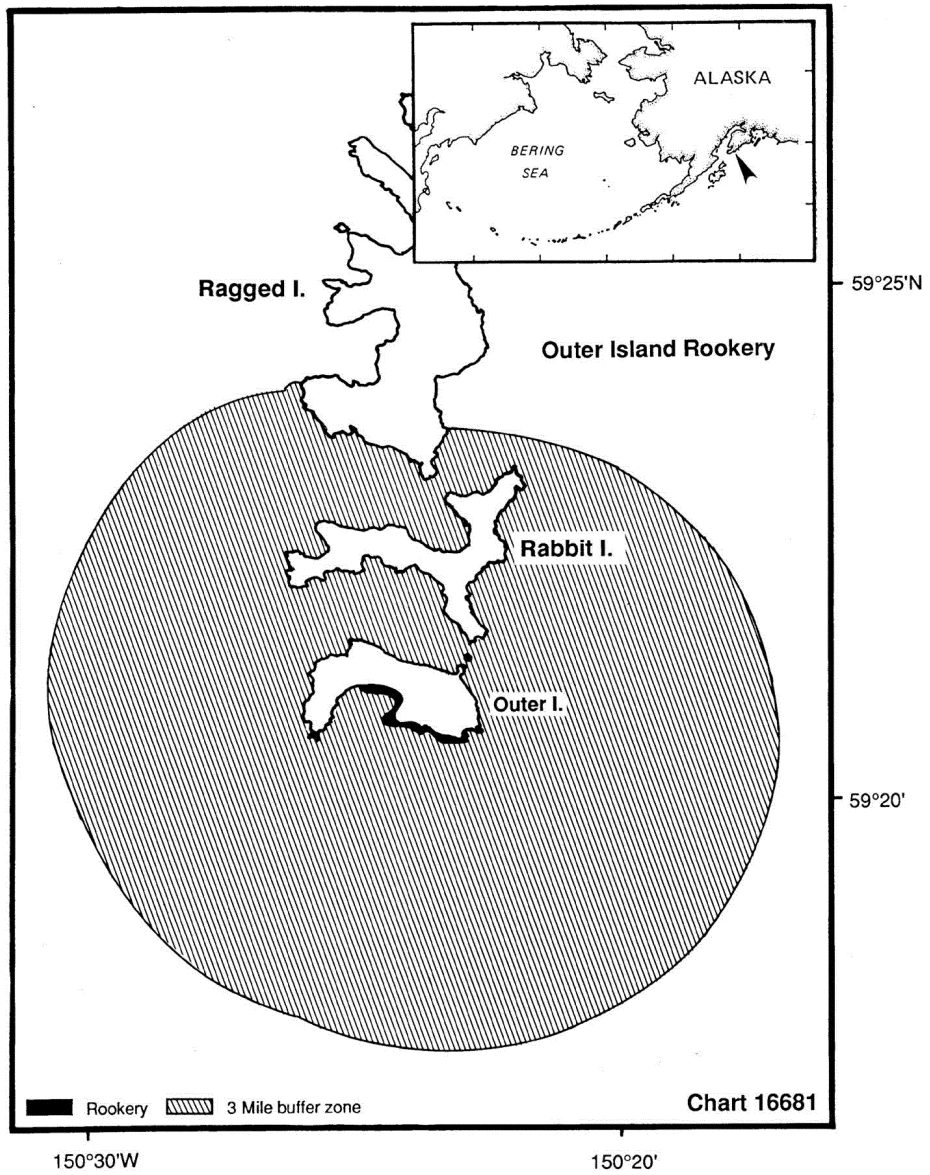
(iii) *Listed sea lion rookery sites.* Listed Steller sea lion rookery sites consist of the rookeries in the Aleutian Islands and the Gulf of Alaska listed in Table 1.

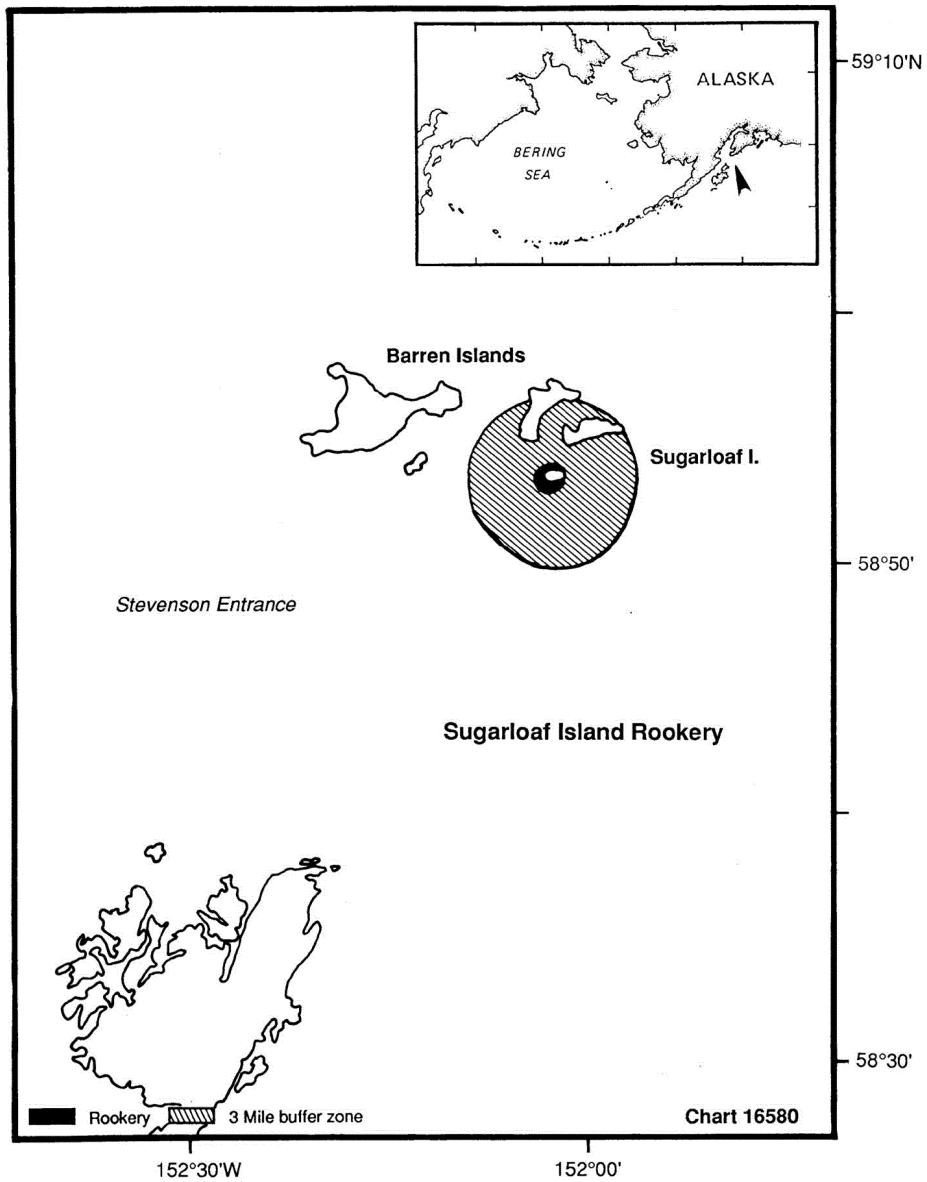
TABLE 1 TO § 224.103—LISTED STELLER SEA LION ROOKERY SITES <sup>1</sup>

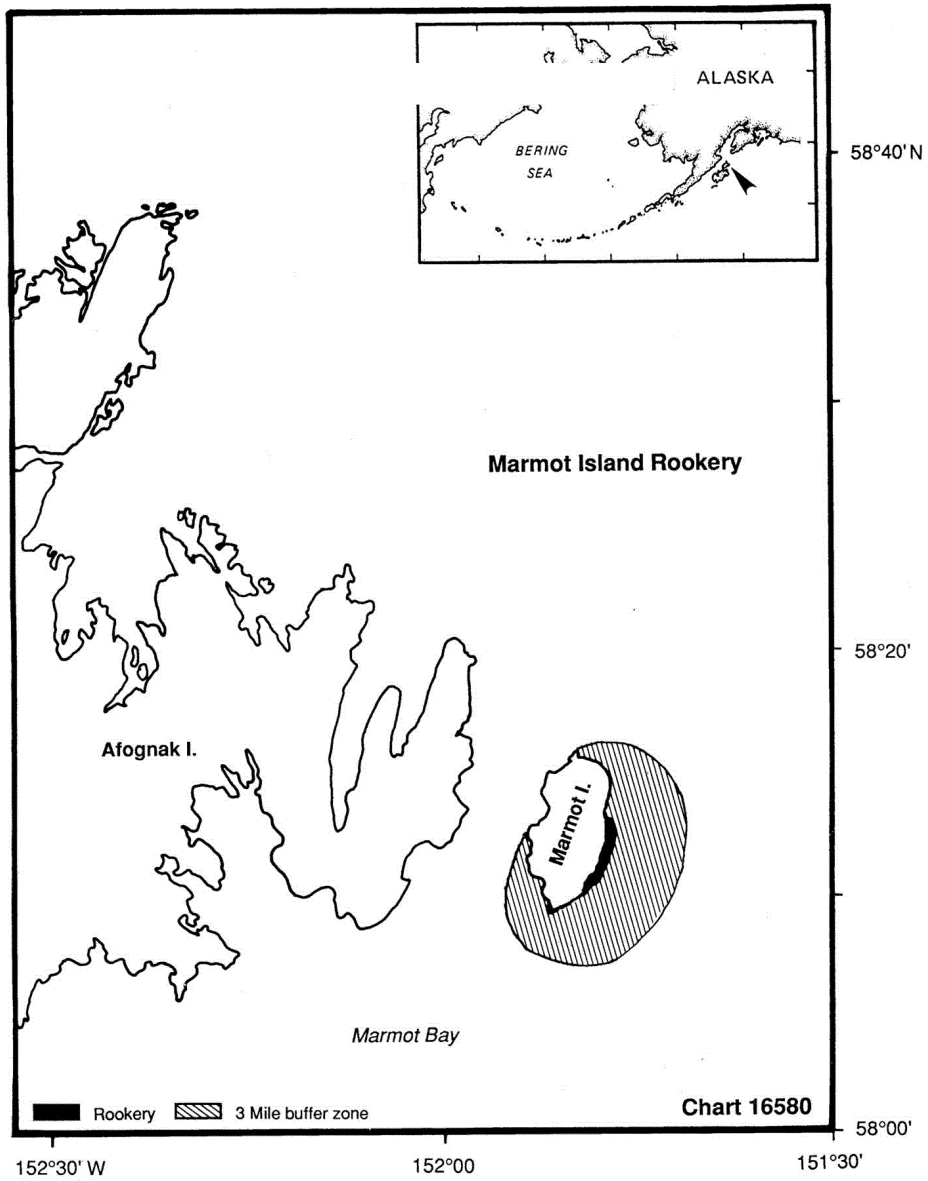
Island	From		To		NOAA Chart	Notes
	Lat.	Long.	Lat.	Long.		
1. Outer I. ....	59°20.5 N	150°23.0 W	59°21.0 N	150°24.5 W	16681	S quadrant.
2. Sugarloaf I. ....	58°53.0 N	152°02.0 W			16580	Whole island.
3. Marmot I. ....	58°14.5 N	151°47.5 W	58°10.0 N	151°51.0 W	16580	SE quadrant.
4. Chirikof I. ....	55°46.5 N	155°39.5 W	55°46.5 N	155°43.0 W	16580	S quadrant.
5. Chowiet I. ....	56°00.5 N	156°41.5 W	56°00.5 N	156°42.0 W	16013	S quadrant.
6. Atkins I. ....	55°03.5 N	159°18.5 W			16540	Whole island.
7. Chernabura I. ....	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W	16540	SE corner.
8. Pinnacle Rock	54°46.0 N	161°46.0 W			16540	Whole island.
9. Clubbing Rks (N).	54°43.0 N	162°26.5 W			16540	Whole island.
Clubbing Rks (S)	54°42.0 N	162°26.5 W			16540	Whole Island.
10. Sea Lion Rks	55°28.0 N	163°12.0 W			16520	Whole island.
11. Ugamak I. ....	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W	16520	E end of island.
12. Akun I. ....	54°18.0 N	165°32.5 W	54°18.0 N	165°31.5 W	16547	Billings Head Bight.
13. Akutan I. ....	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W	16520	SW corner, Cape Morgan.
14. Bogoslof I. ....	53°56.0 N	168°02.0 W			16500	Whole island.
15. Ogchul I. ....	53°00.0 N	168°24.0 W			16500	Whole island.
16. Adugak I. ....	52°55.0 N	169°10.5 W			16500	Whole island.
17. Yunaska I. ....	52°42.0 N	170°38.5 W	52°41.0 N	170°34.5 W	16500	NE end.
18. Seguam I. ....	52°21.0 N	172°35.0 W	52°21.0 N	172°33.0 W	16480	N coast, Saddleridge Pt.
19. Agligadak I. ..	52°06.5 N	172°54.0 W			16480	Whole island.
20. Kasatochi I. ..	52°10.0 N	175°31.5 W	52°10.5 N	175°29.0 W	16480	N half of island.
21. Adak I. ....	51°36.5 N	176°59.0 W	51°38.0 N	176°59.5 W	16460	SW Point, Lake Point.
22. Gramp rock ..	51°29.0 N	178°20.5 W			16460	Whole island.
23. Tag I. ....	51°33.5 N	178°34.5 W			16460	Whole island.
24. Ulak I. ....	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W	16460	SE corner, Hasgox Pt.
25. Semisopchnoi.	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E	16440	E quadrant, Pochnoi Pt.
Semisopchnoi ...	52°01.5 N	179°37.5 E	52°01.5 N	179°39.0 E	16440	N quadrant, Petrel Pt.
26. Amchitka I. ...	51°22.5 N	179°28.0 E	51°21.5 N	179°25.0 E	16440	East Cape.
27. Amchitka I. ...	51°32.5 N	178°49.5 E			16440	Column Rocks.
28. Ayugadak Pt.	51°45.5 N	178°24.5 E			16440	SE coast of Rat Island.
29. Kiska I. ....	51°57.5 N	177°21.0 E	51°56.5 N	177°20.0 E	16440	W central, Lief Cove.
30. Kiska I. ....	51°52.5 N	177°13.0 E	51°53.5 N	177°12.0 E	16440	Cape St. Stephen.
31. Walrus I. ....	57°11.0 N	169°56.0 W			16380	Whole island.
32. Buldir I. ....	52°20.5 N	175°57.0 E	52°23.5 N	175°51.0 E	16420	Se point to NW point.
33. Agattu I. ....	52°24.0 N	173°21.5 E			16420	Gillion Point.
34. Agattu I. ....	52°23.5 N	173°43.5 E	52°22.0 N	173°41.0 E	16420	Cape Sabak.
35. Attu I. ....	52°54.5 N	172°28.5 E	52°57.5 N	172°31.5 E	16681	S Quadrant.

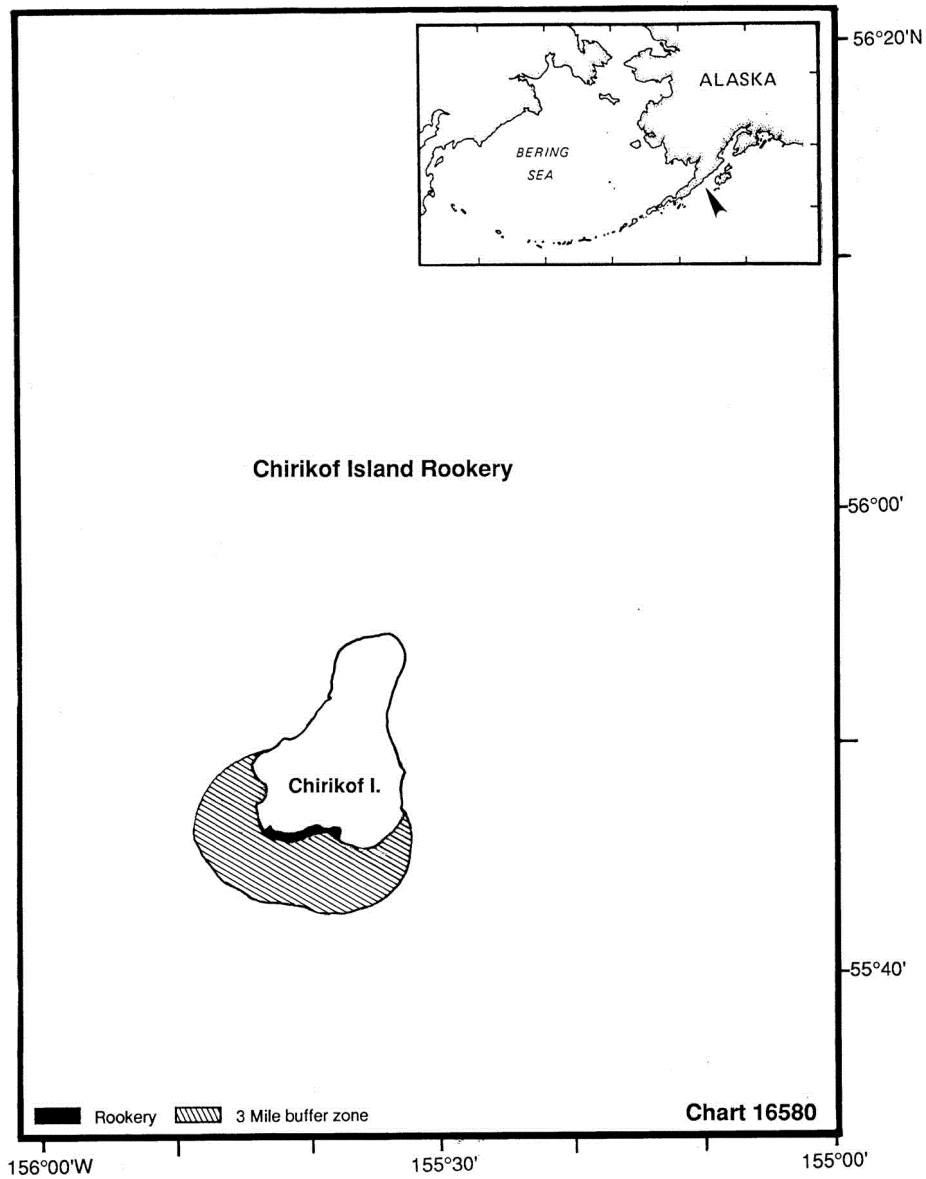
<sup>1</sup> Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.



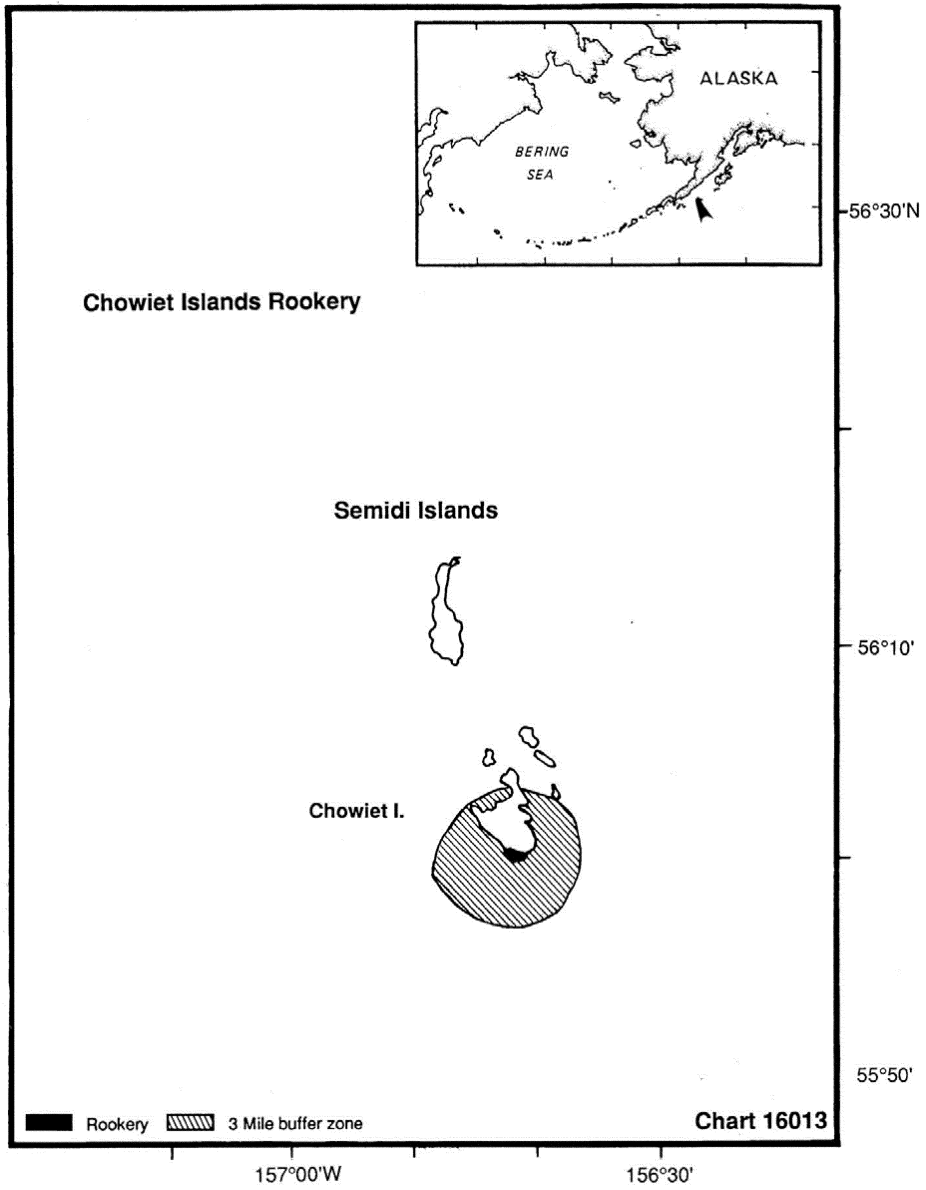


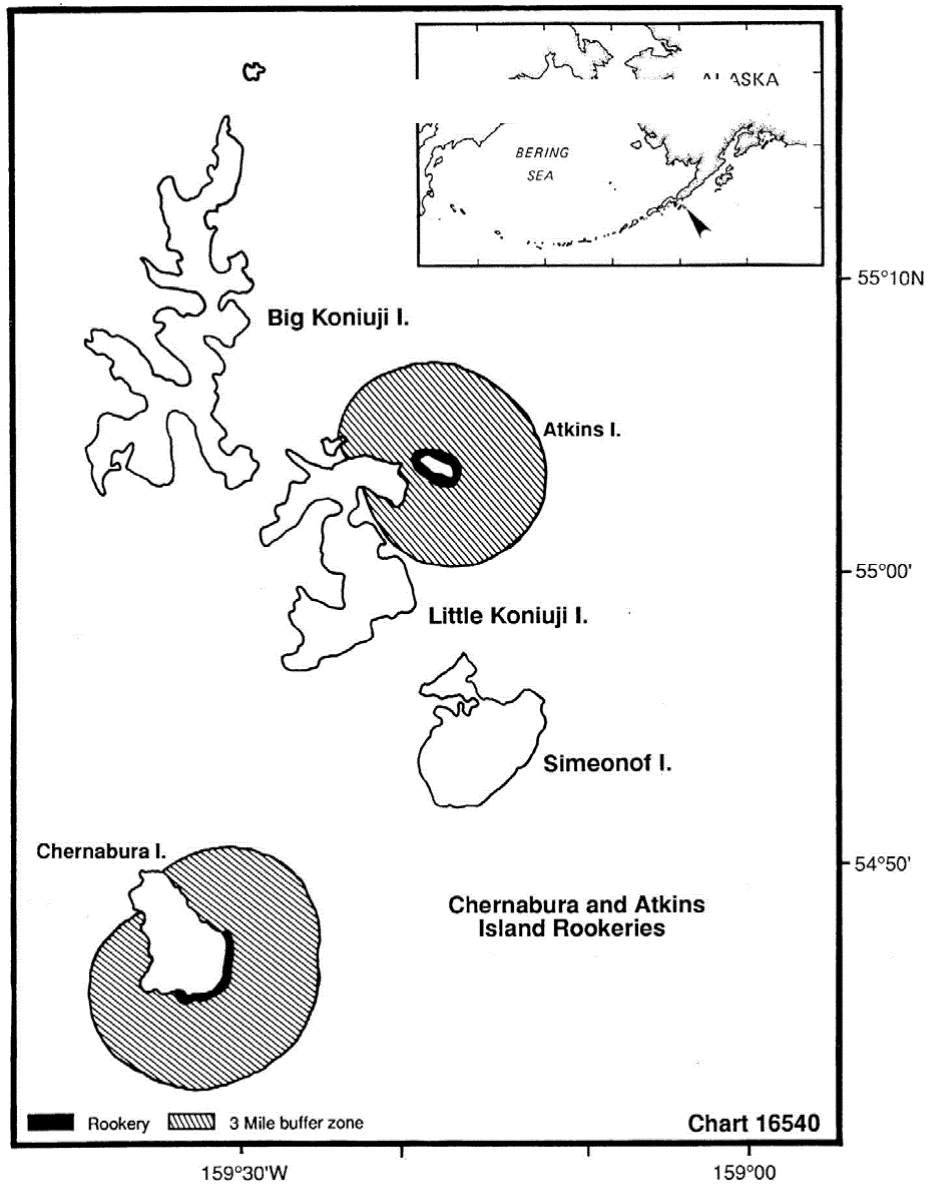


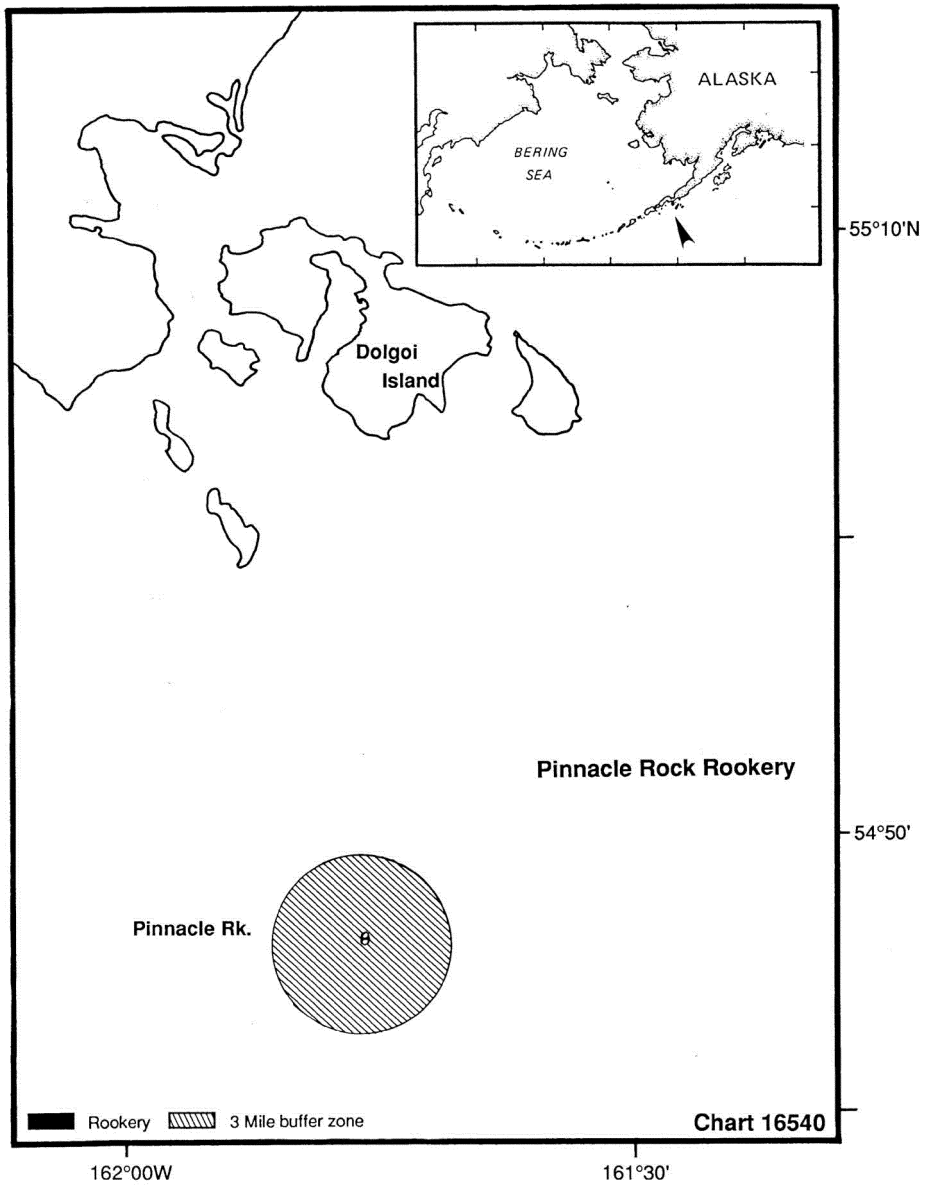


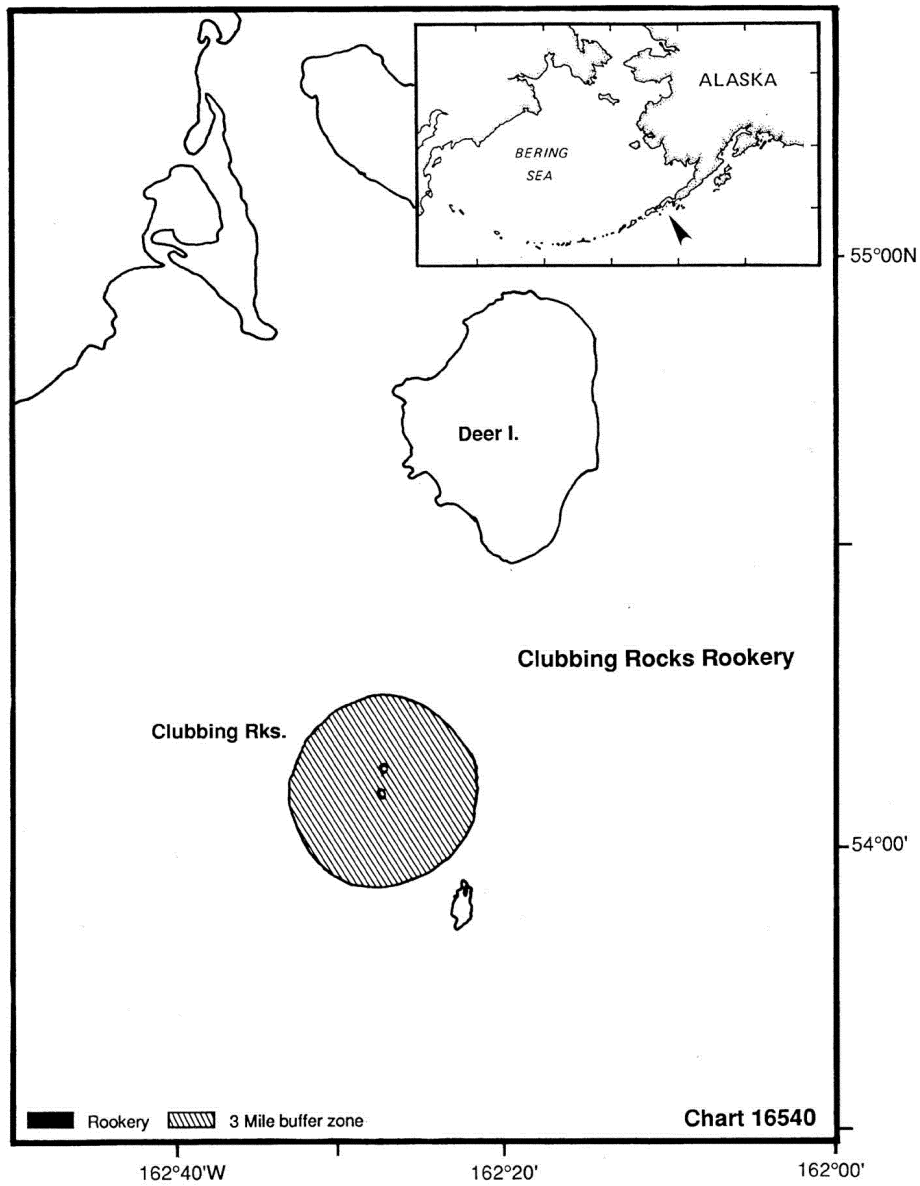


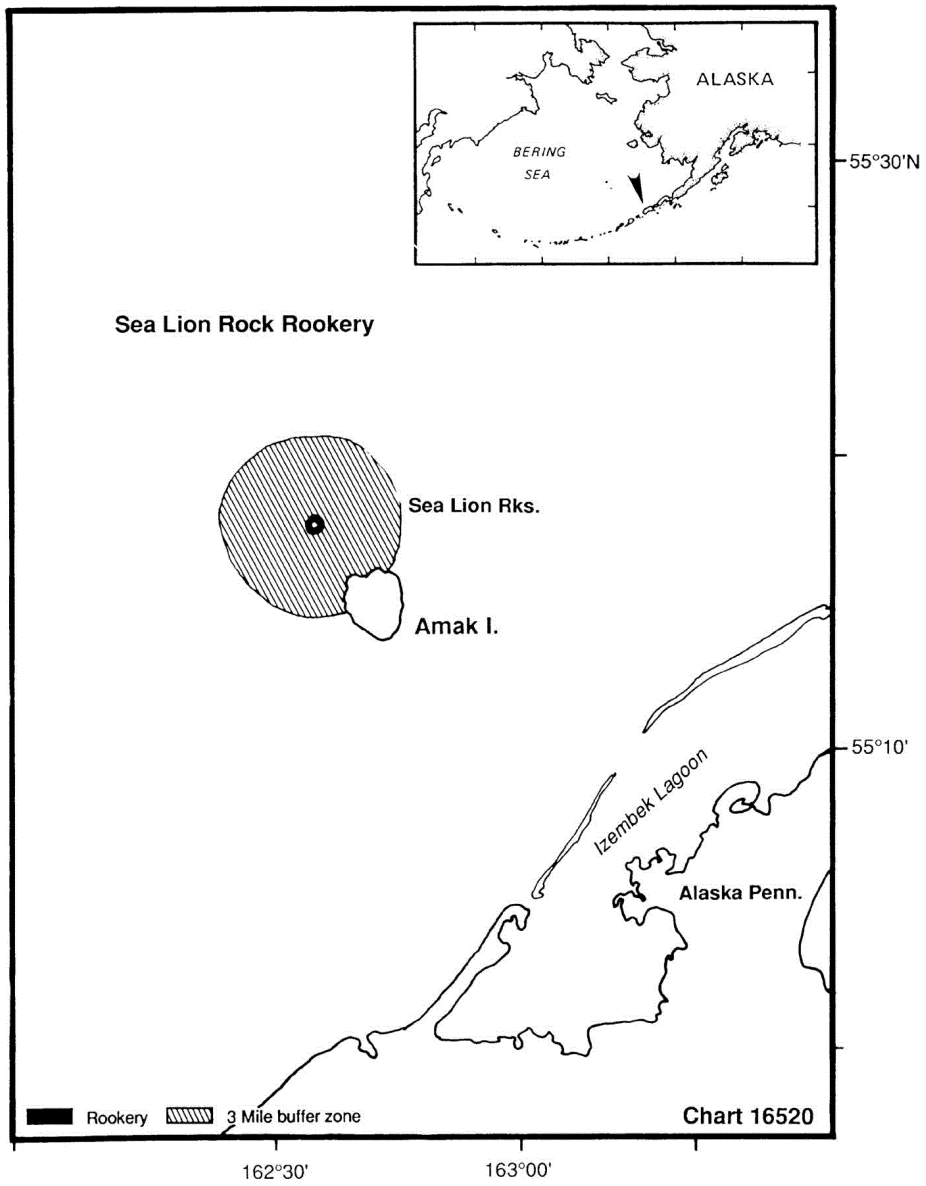


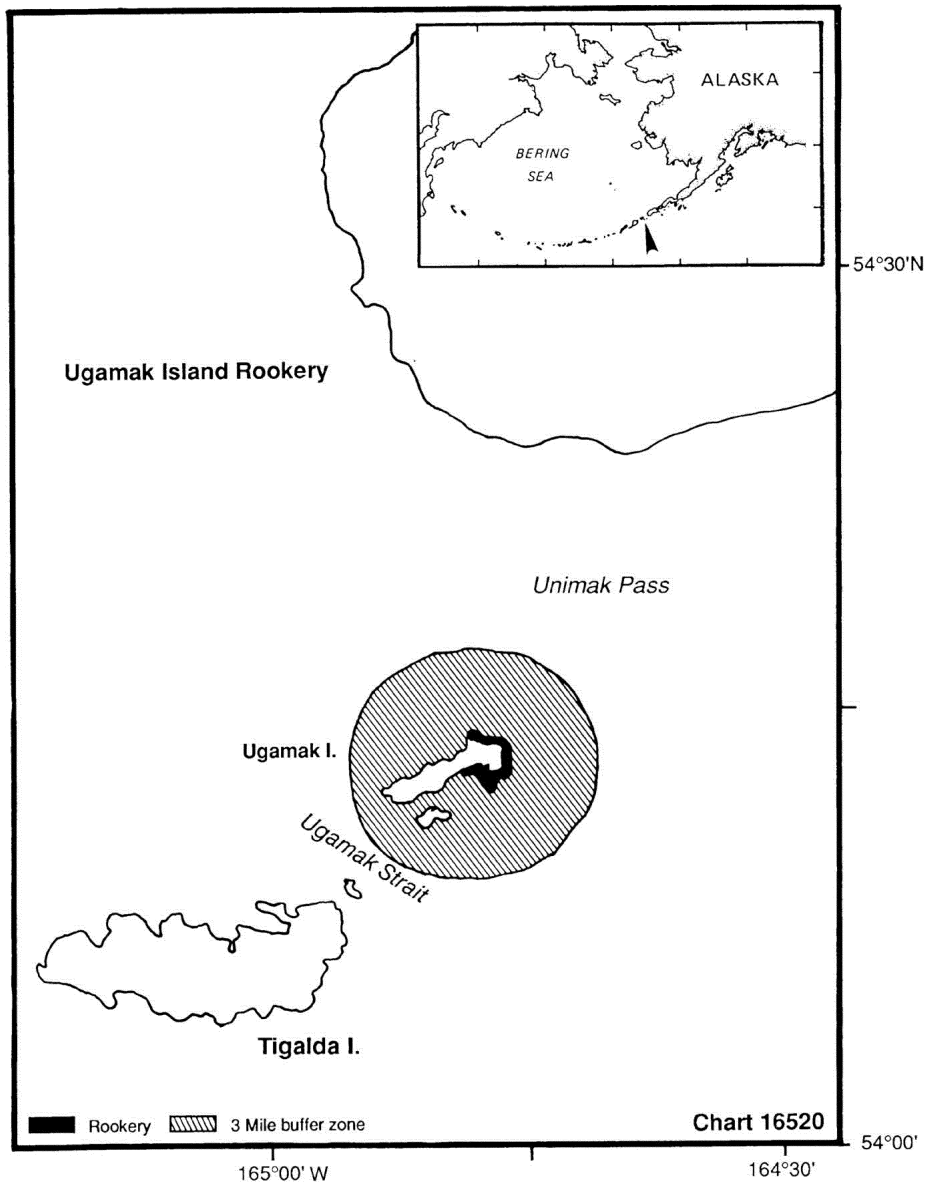


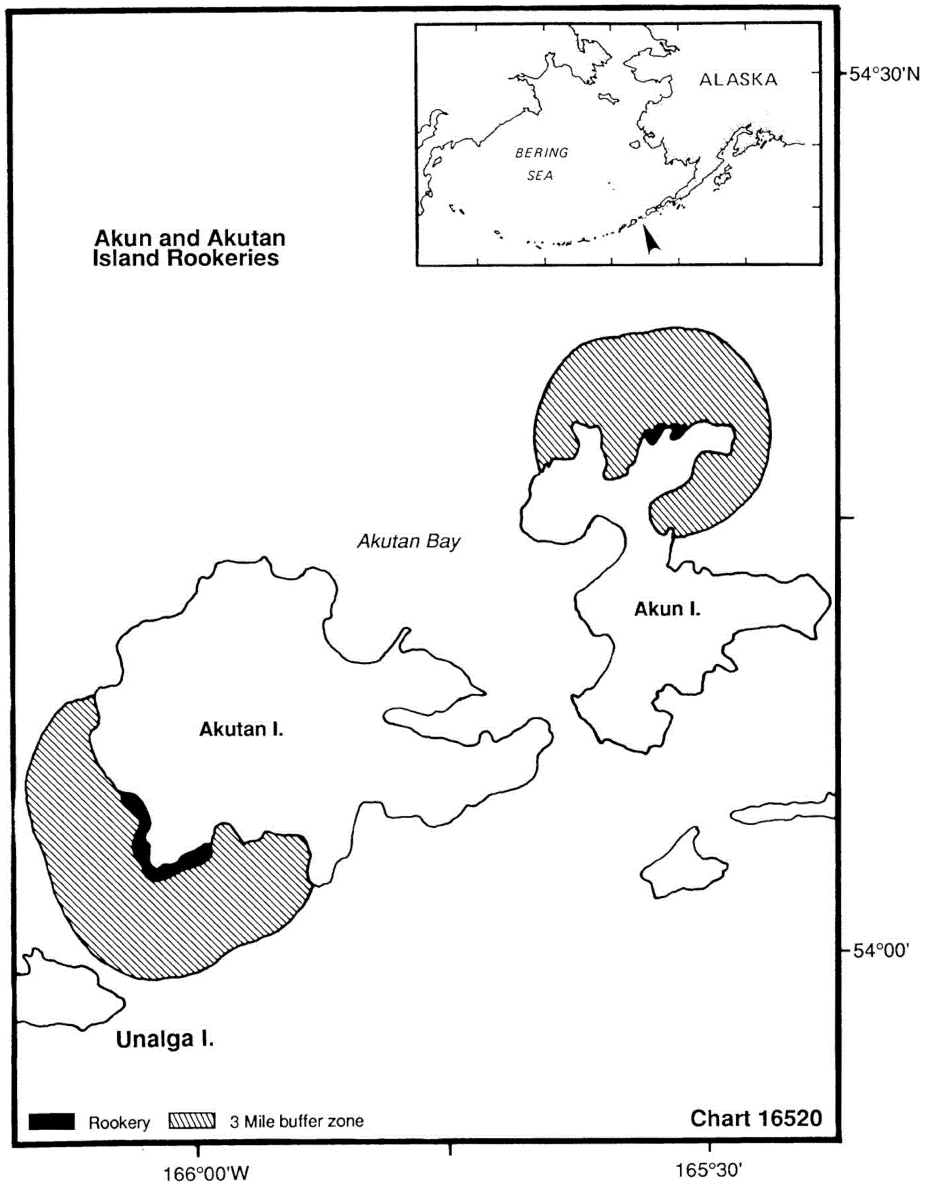


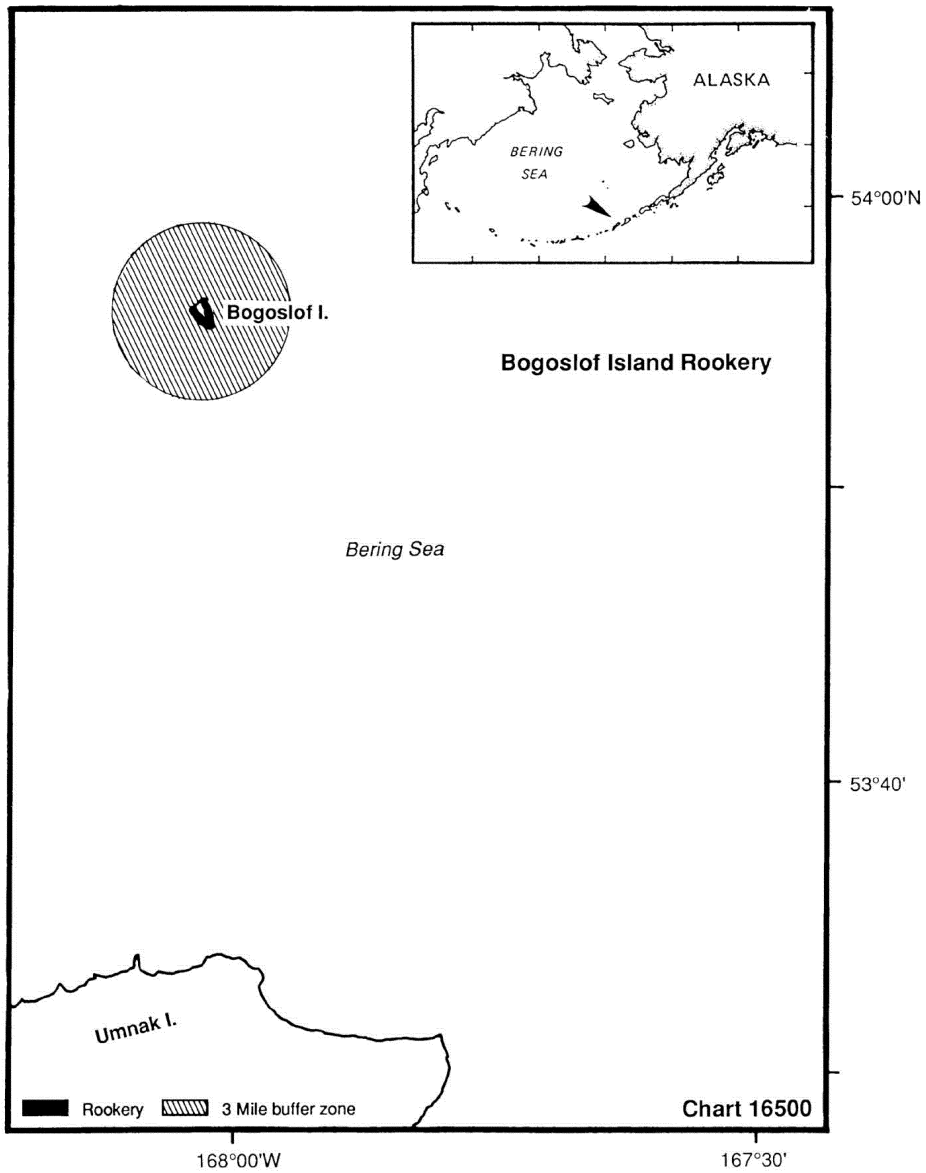




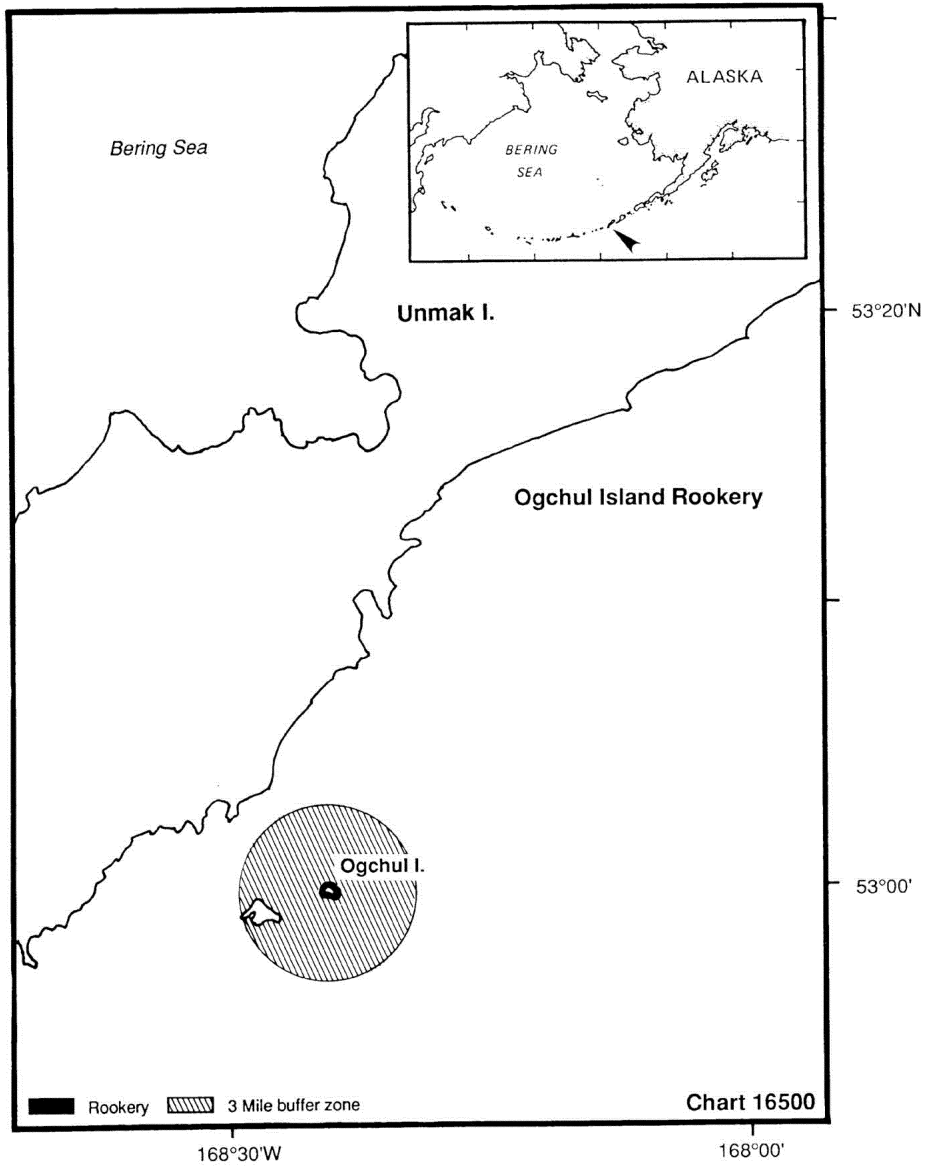


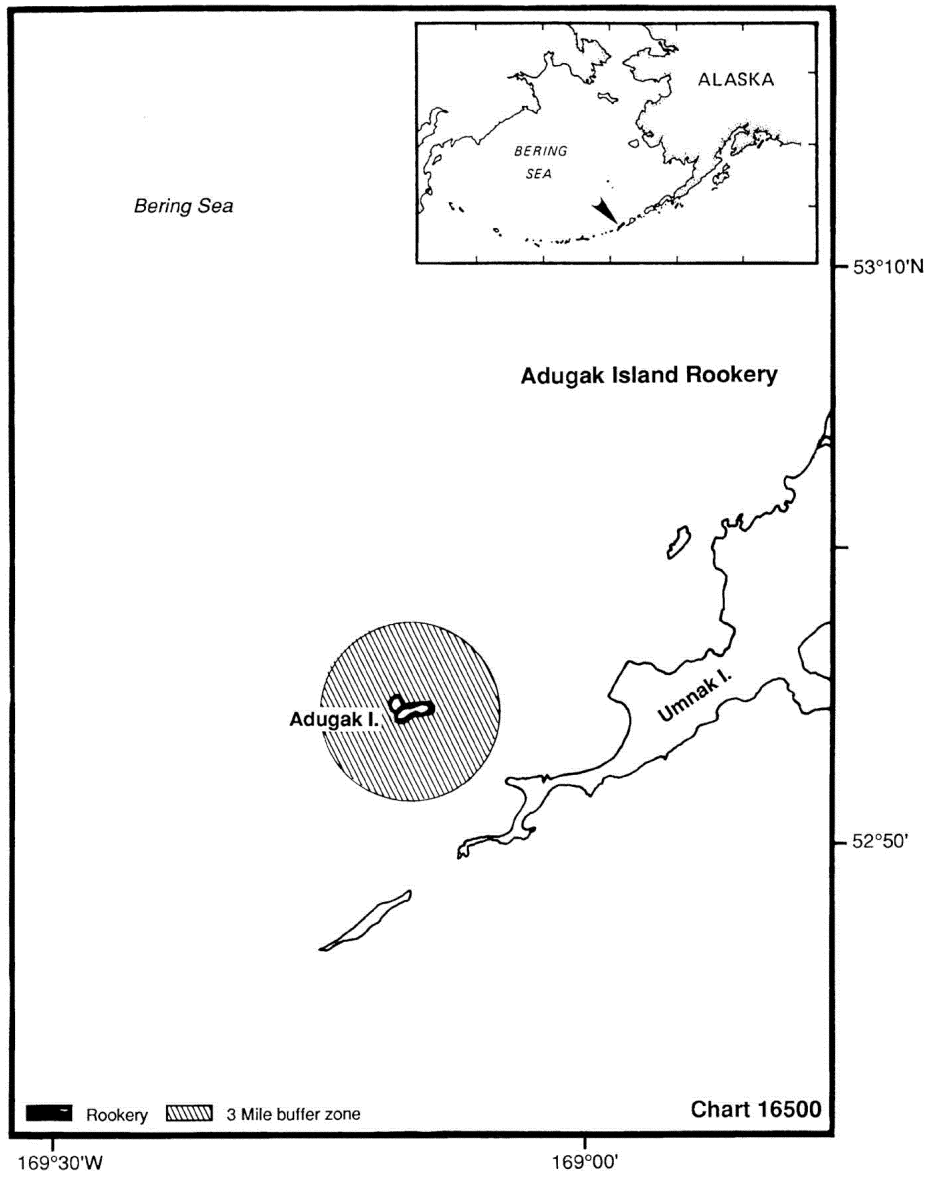


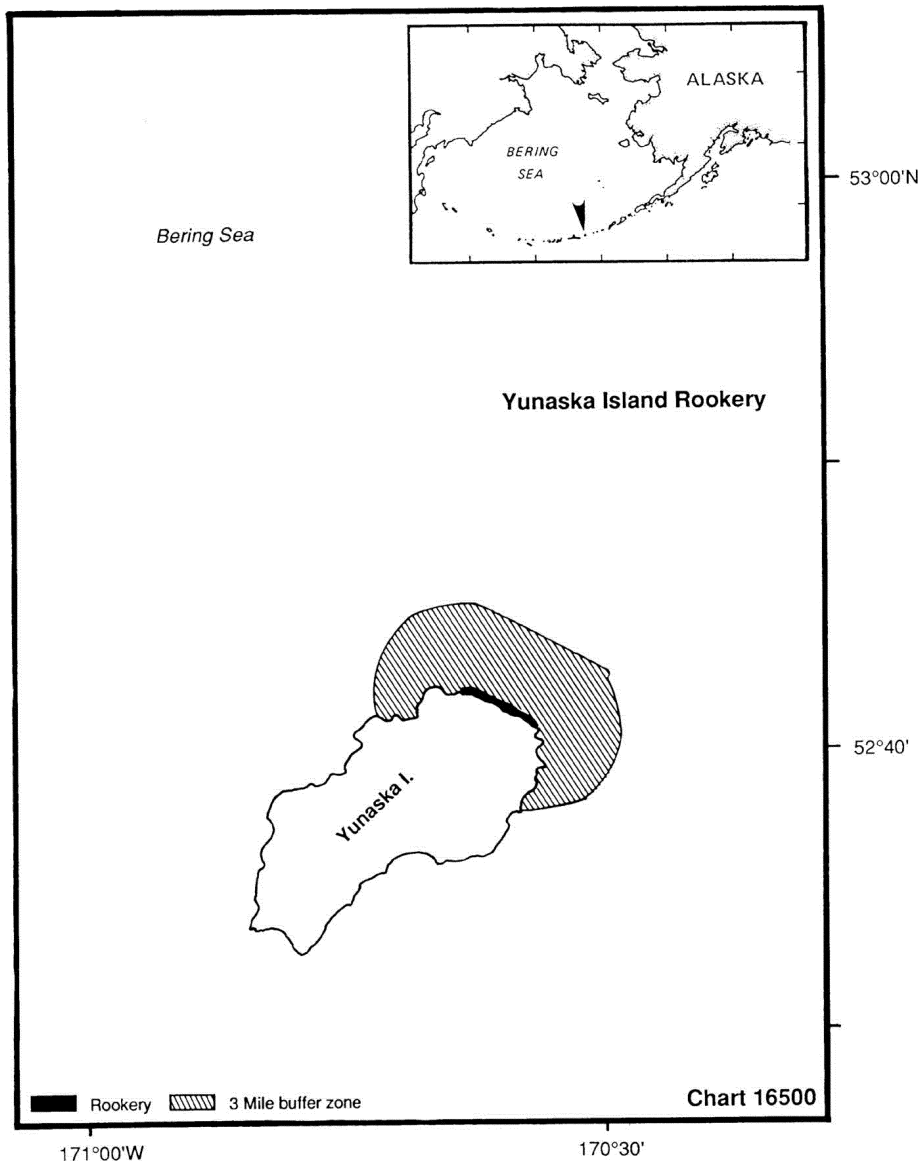


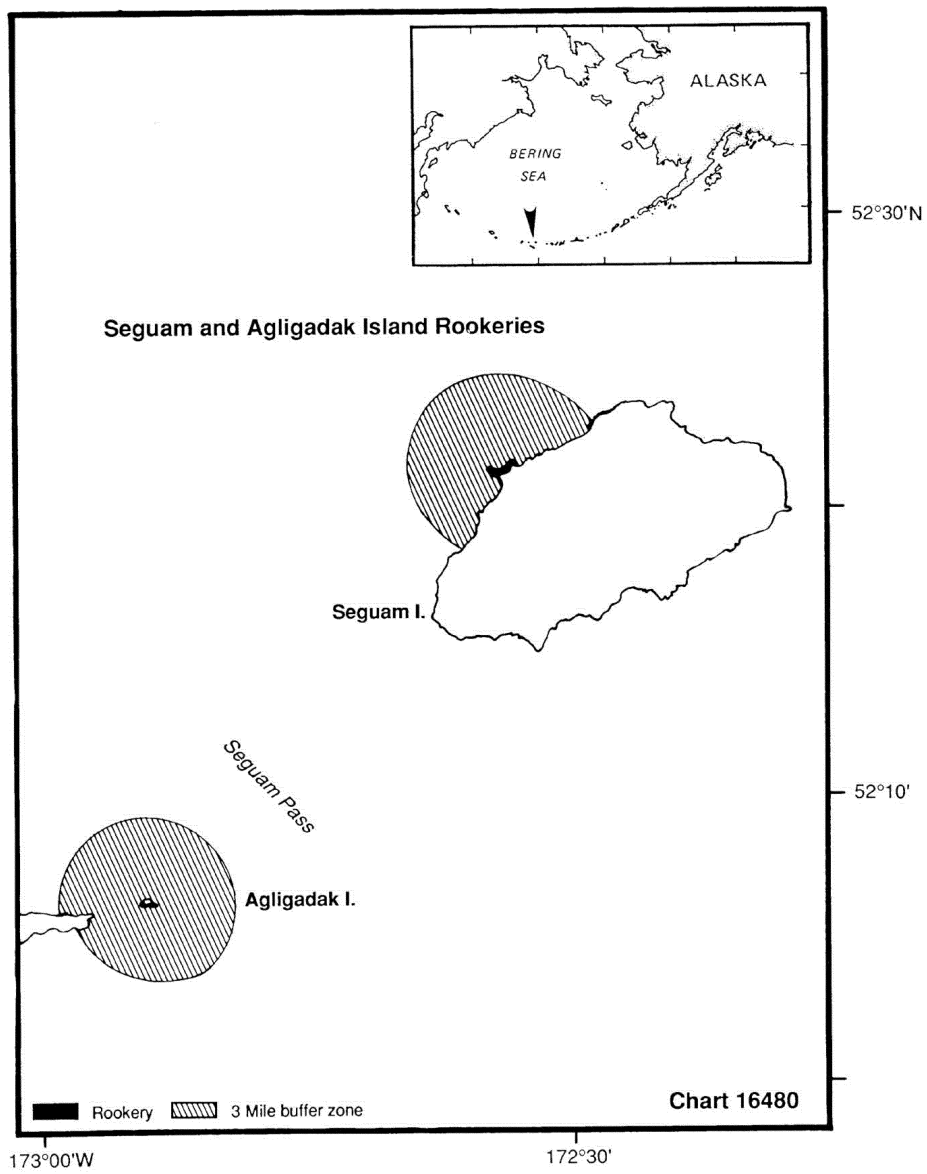


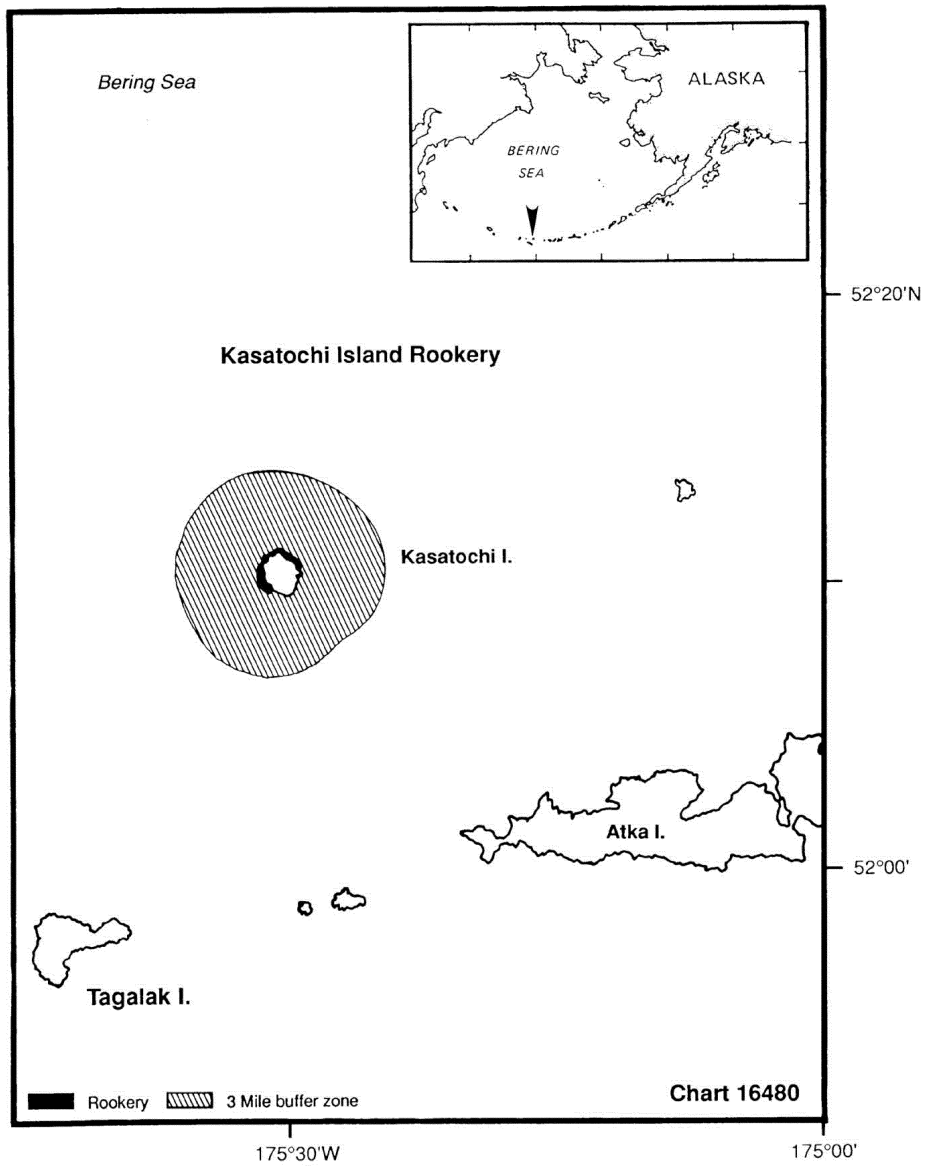


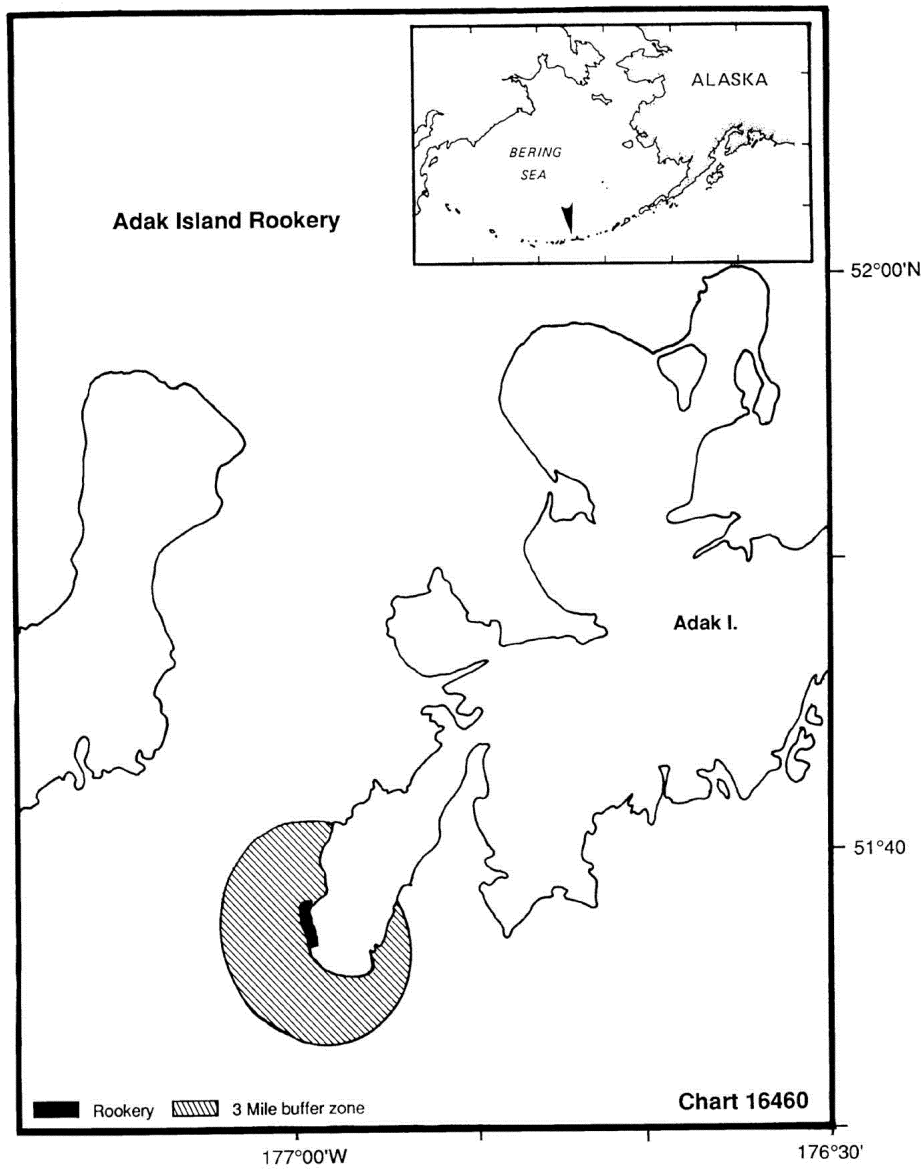


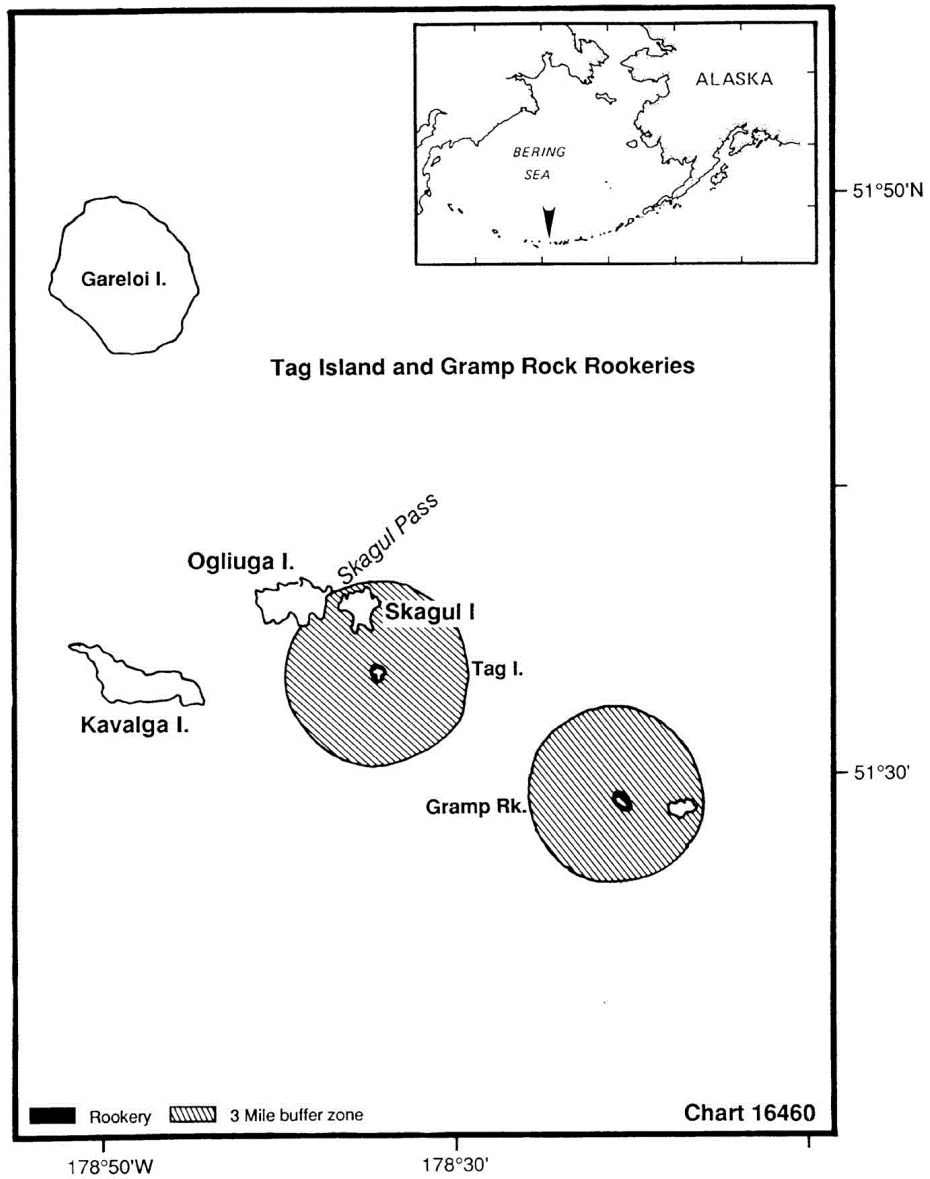


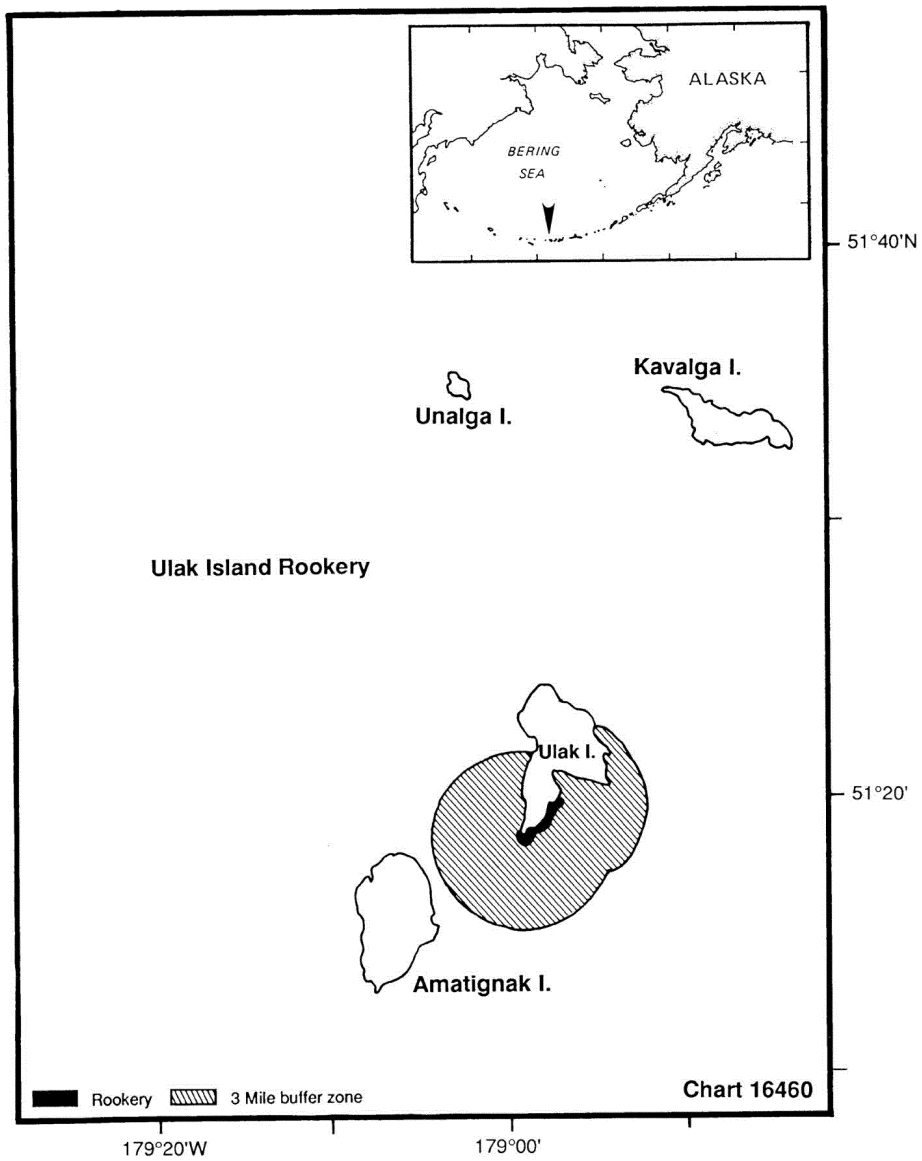




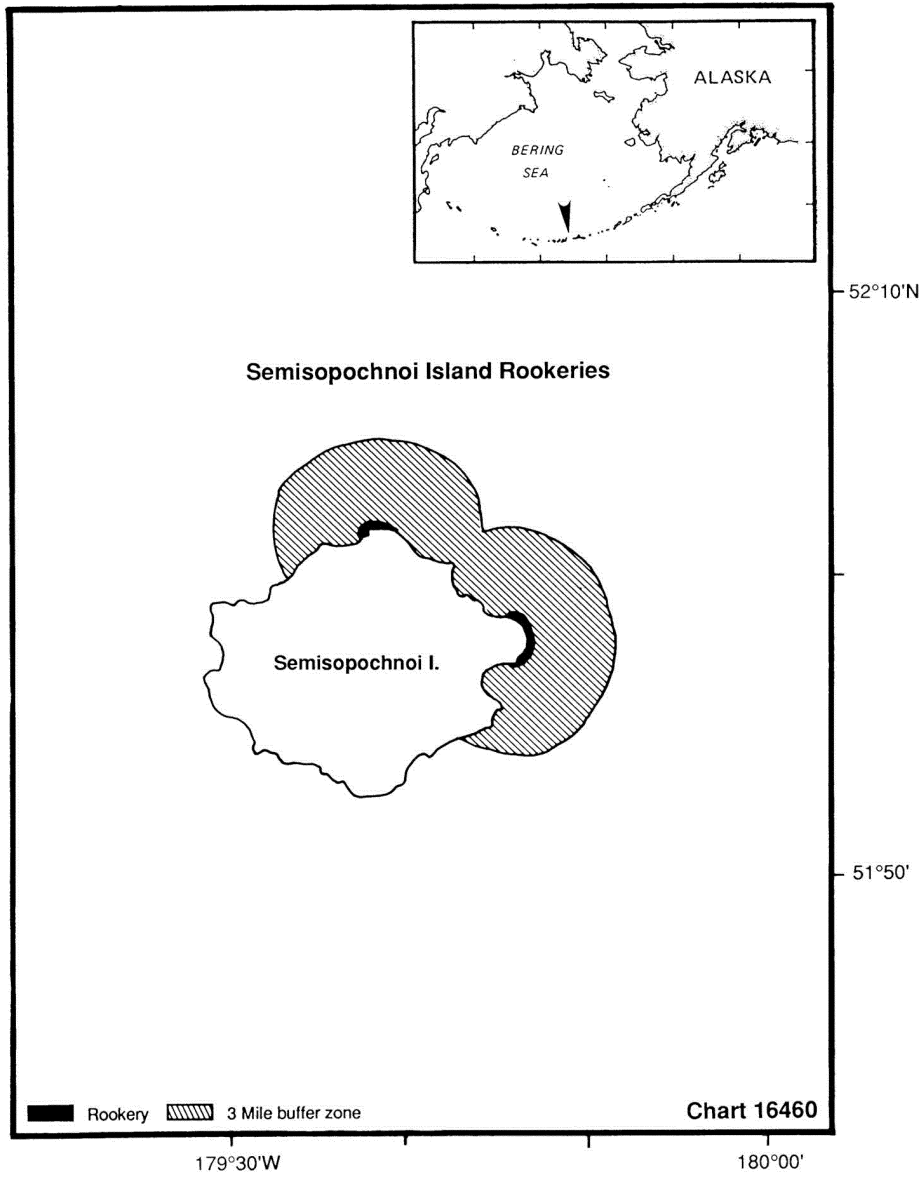


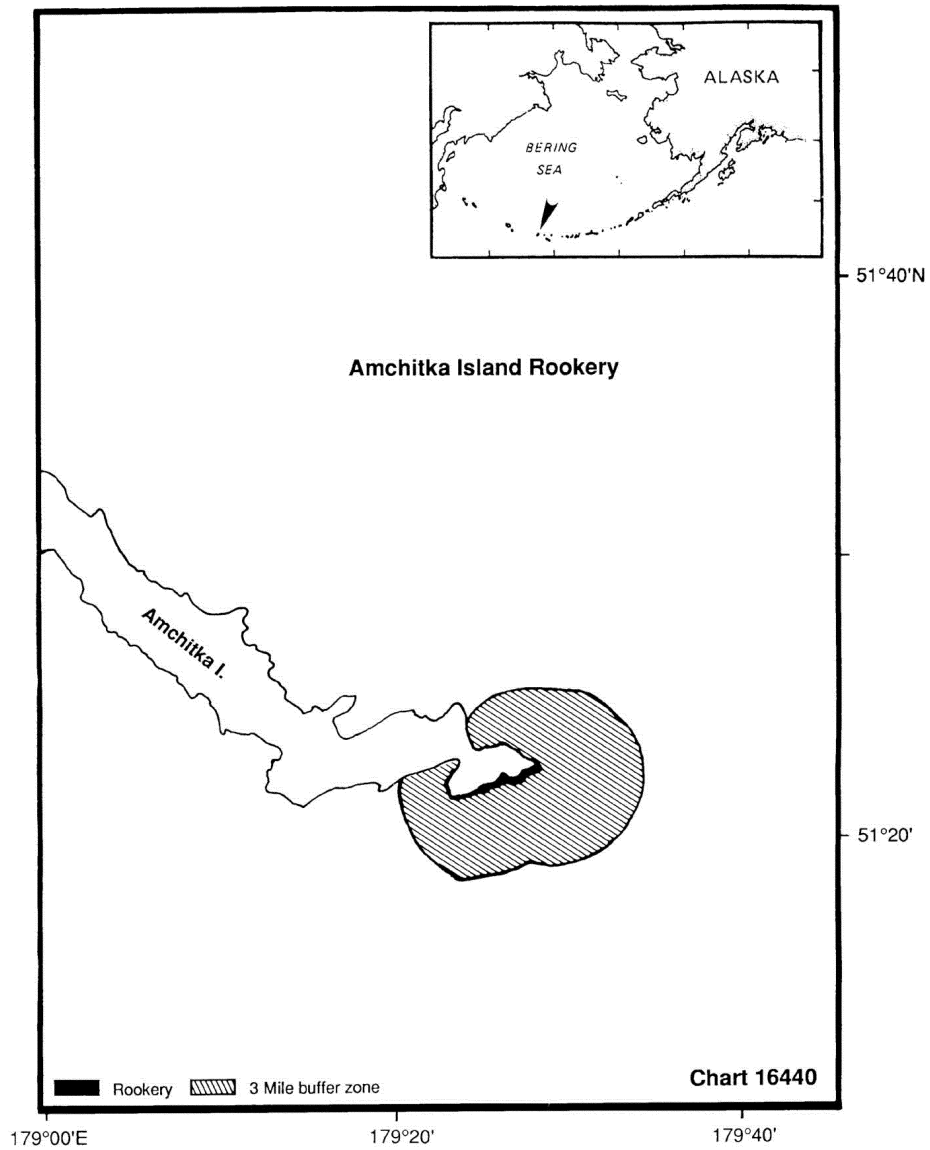


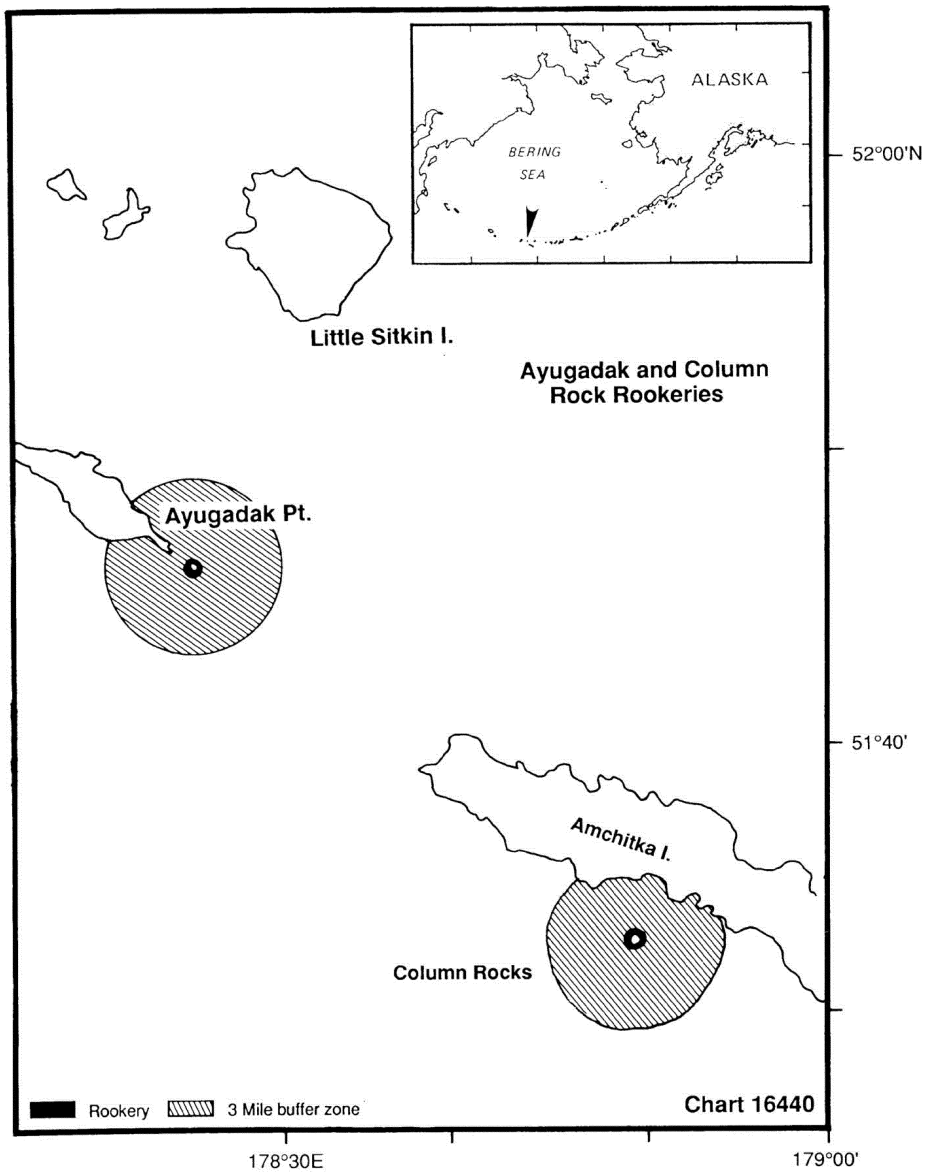


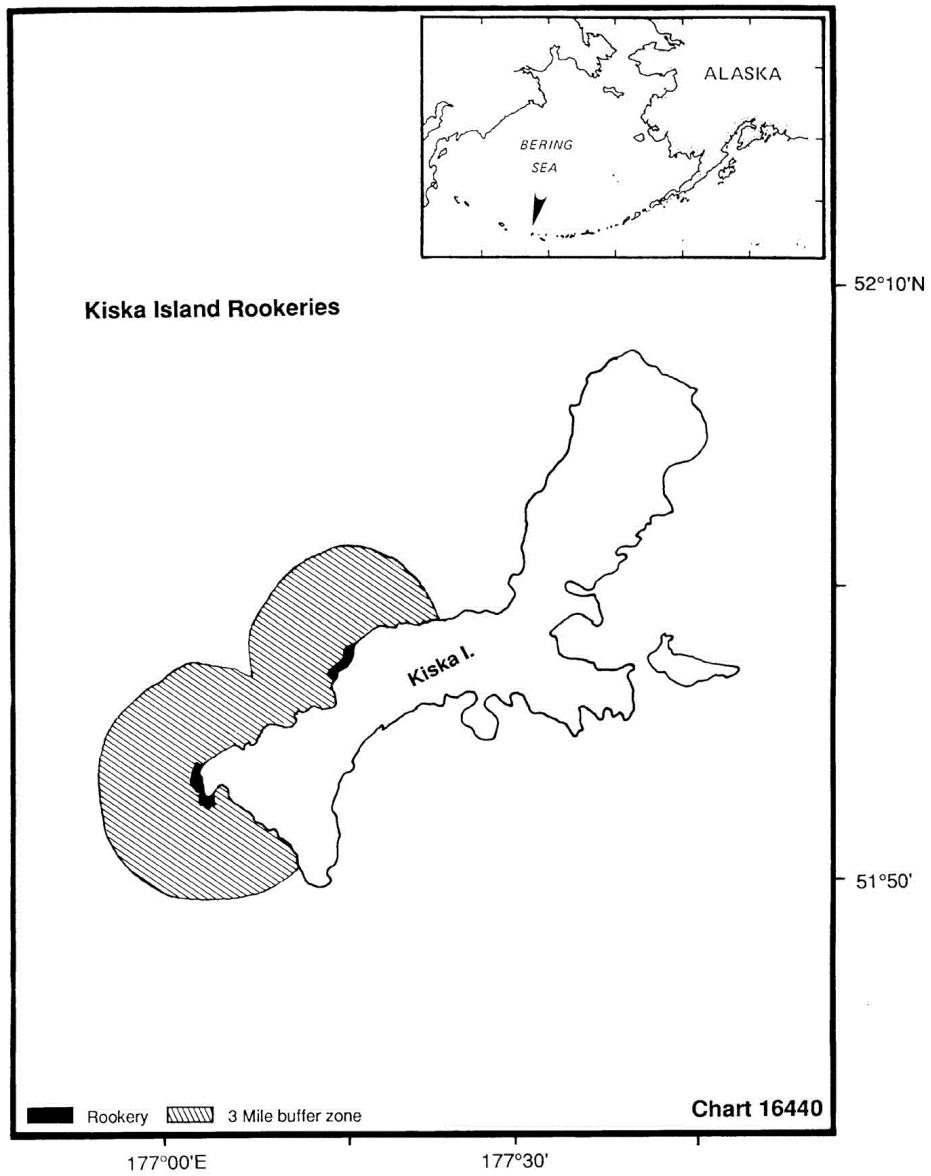


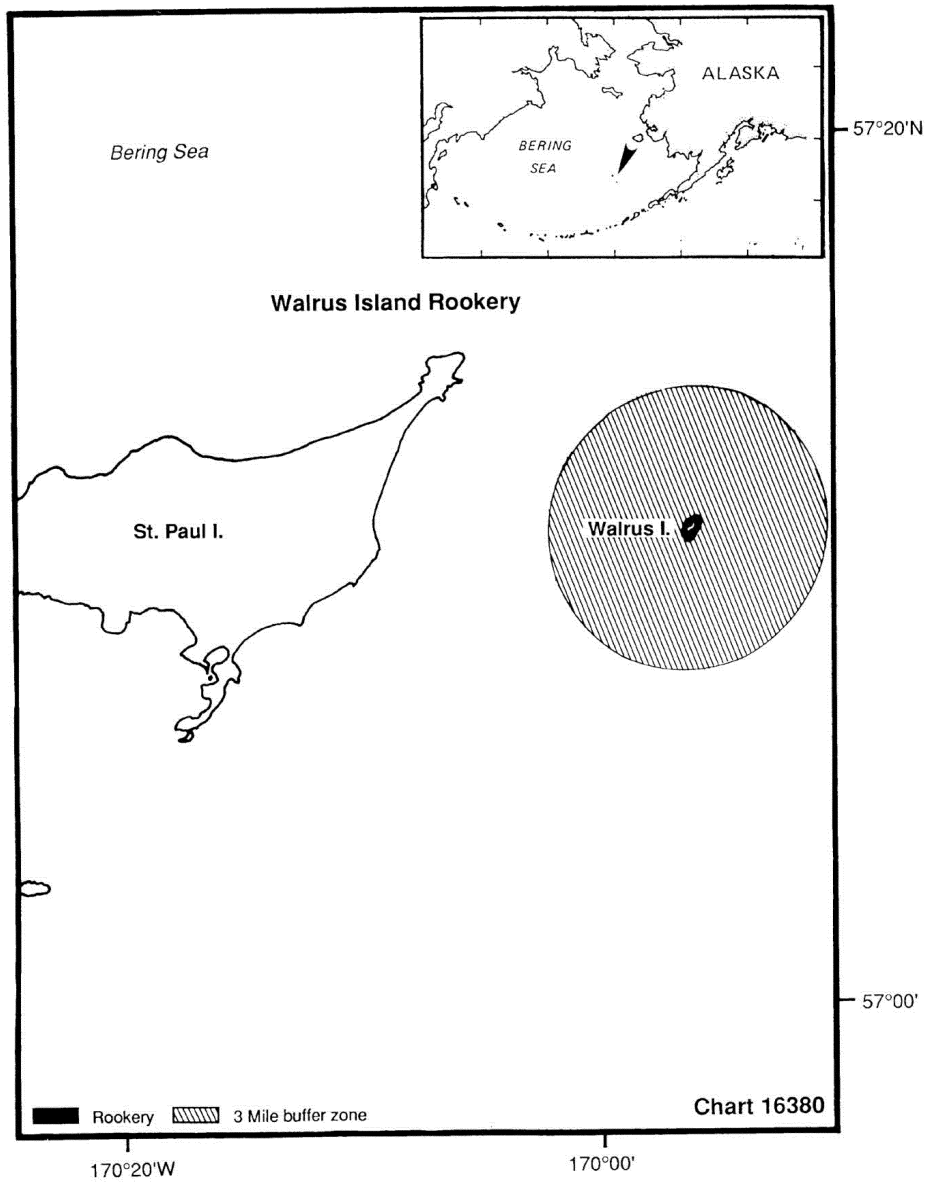


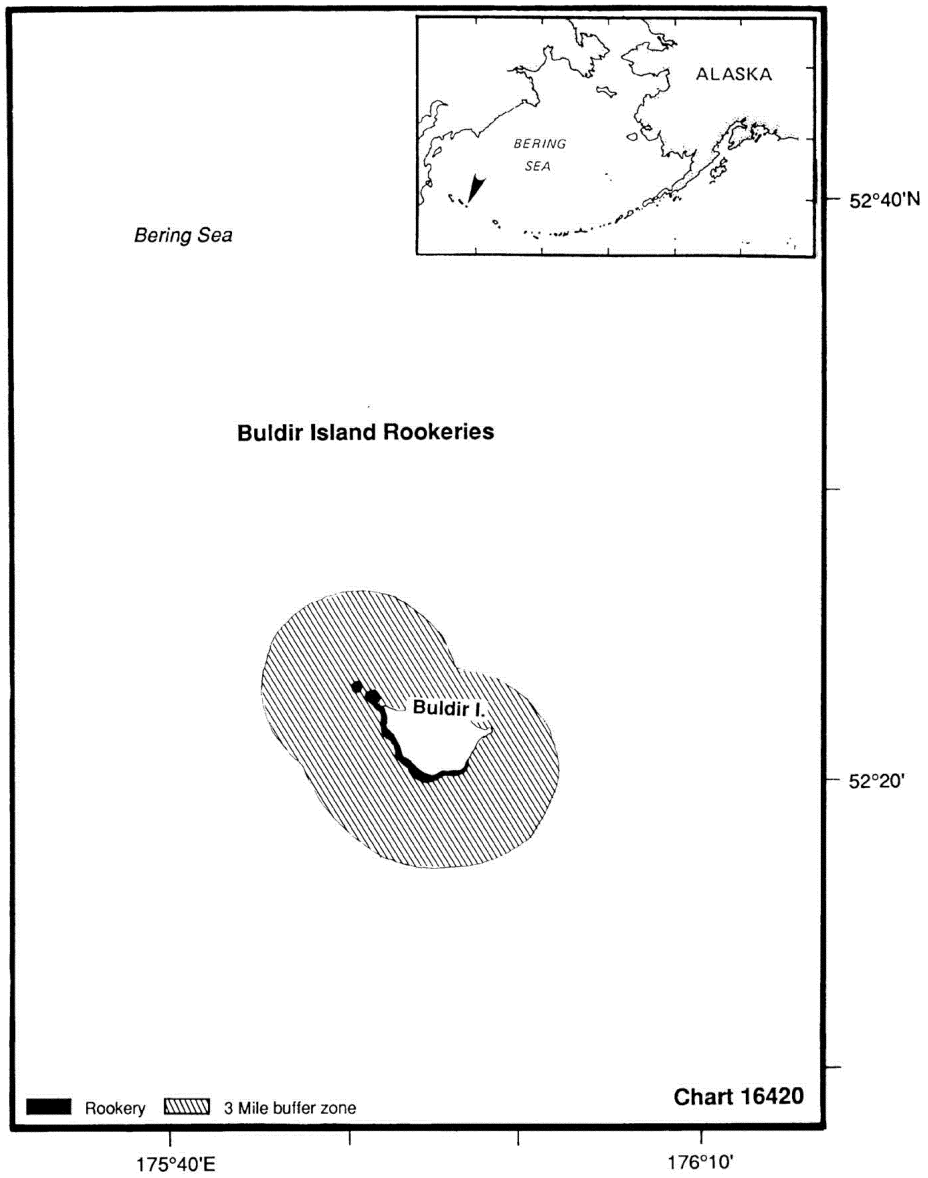


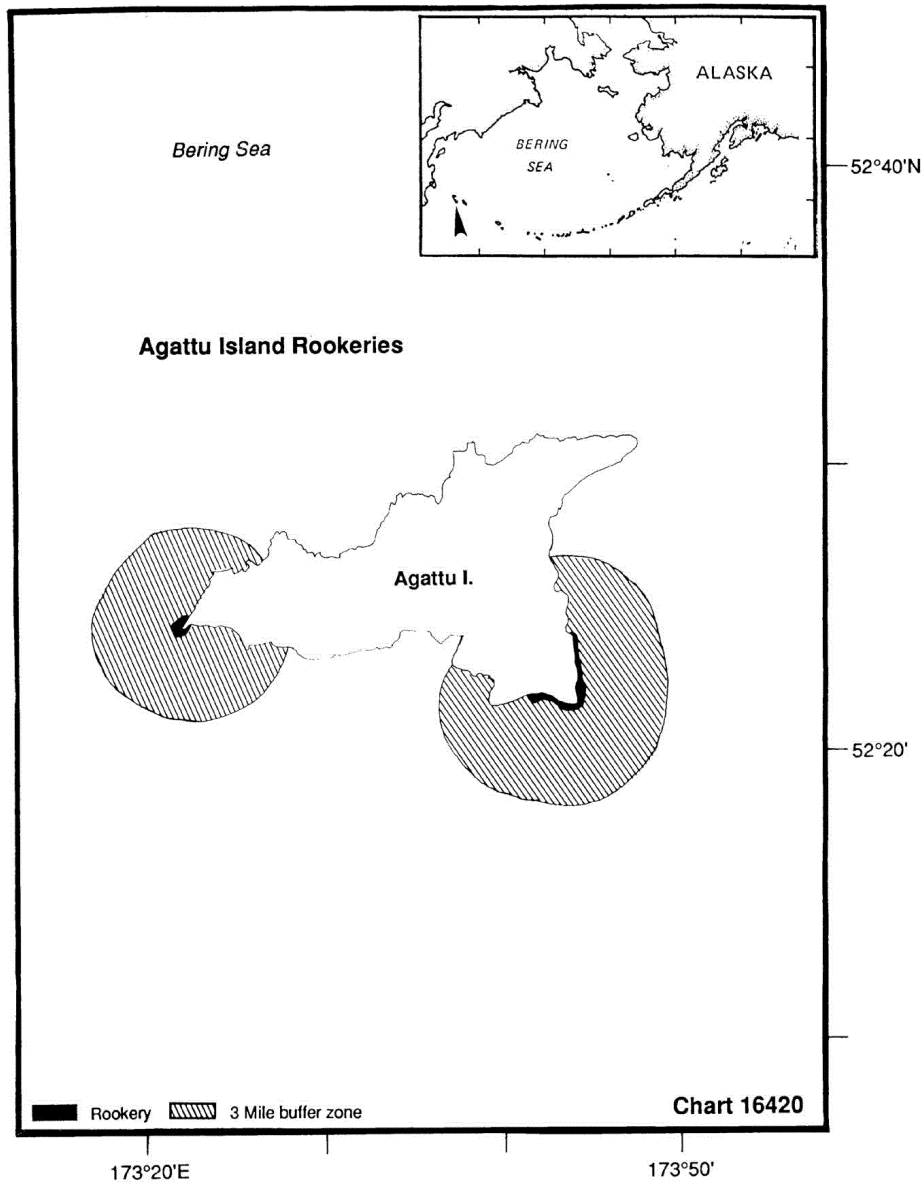


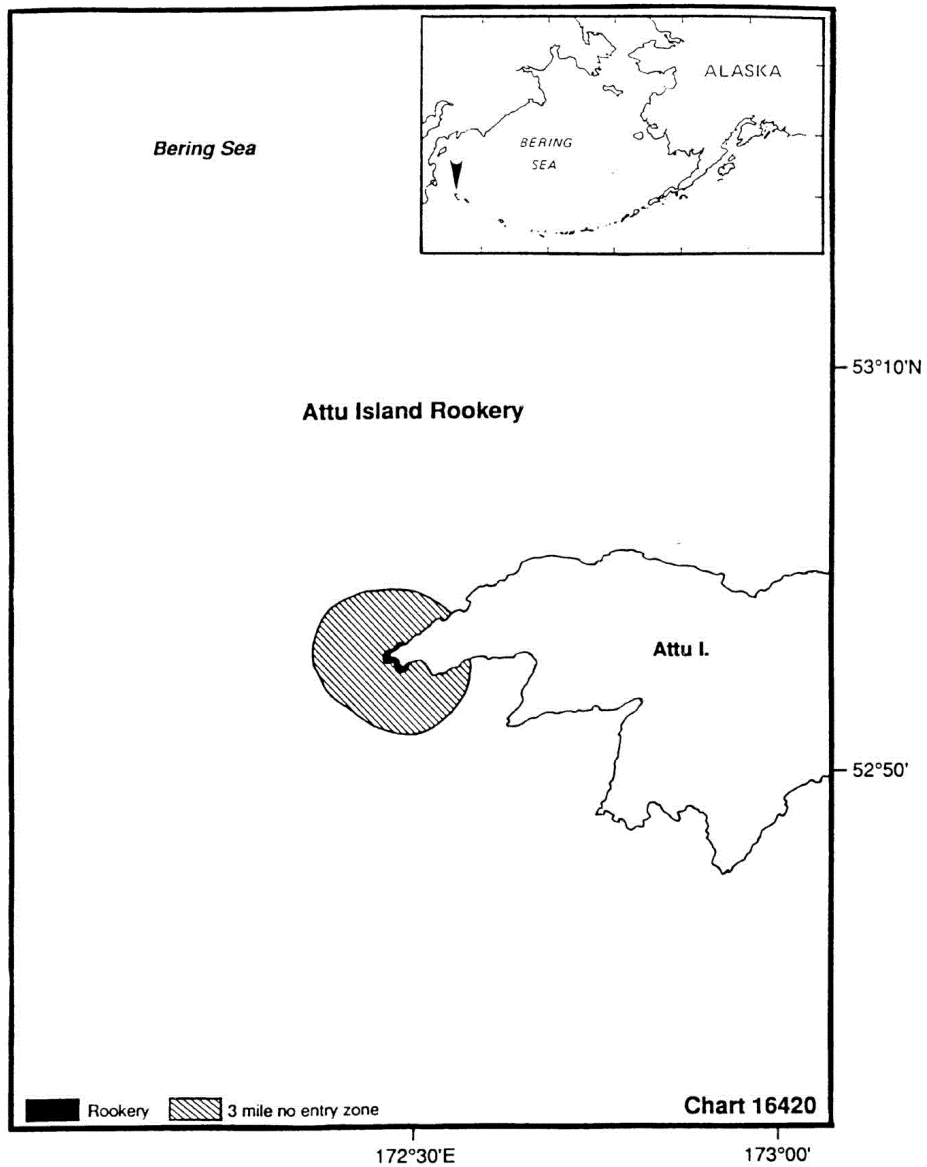












(iv) *Commercial Fishing Operations.* The incidental mortality and serious injury of endangered Steller sea lions in commercial fisheries can be authorized in compliance with sections 101(a)(5) and 118 of the Marine Mammal Protection Act.

(2) *Exceptions—(i) Permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under paragraph (d)(1) of this section in accordance with and subject to the provisions of part



222, subpart C of this chapter—General Permit Procedures.

(ii) *Official activities.* The taking of Steller sea lions must be reported within 30 days to the Regional Administrator, Alaska Region. Paragraph (d)(1) of this section does not prohibit or restrict a Federal, state or local government official, or his or her designee, who is acting in the course of official duties from:

(A) Taking a Steller sea lion in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; or

(B) Entering the buffer areas to perform activities that are necessary for national defense, or the performance of other legitimate governmental activities.

(iii) *Subsistence takings by Alaska natives.* Paragraph (d)(1) of this section does not apply to the taking of Steller sea lions for subsistence purposes under section 10(e) of the Act.

(iv) *Emergency situations.* Paragraph (d)(1)(ii) of this section does not apply to an emergency situation in which compliance with that provision presents a threat to the health, safety, or

life of a person or presents a significant threat to the vessel or property.

(v) *Exemptions.* Paragraph (d)(1)(ii) of this section does not apply to any activity authorized by a prior written exemption from the Regional Administrator, Alaska Region, National Marine Fisheries Service. Concurrently with the issuance of any exemption, the Assistant Administrator will publish notice of the exemption in the FEDERAL REGISTER. An exemption may be granted only if the activity will not have a significant adverse effect on Steller sea lions, the activity has been conducted historically or traditionally in the buffer zones, and there is no readily available and acceptable alternative to or site for the activity.

(vi) *Navigational transit.* Paragraph (d)(1)(ii) of this section does not prohibit a vessel in transit from passing through a strait, narrows, or passageway listed in this paragraph if the vessel proceeds in continuous transit and maintains a minimum of 1 nautical mile from the rookery site. The listing of a strait, narrows, or passageway does not indicate that the area is safe for navigation. The listed straits, narrows, or passageways include the following:

Rookery	Straits, narrow, or pass
Akutan Island .....	Akutan Pass between Cape Morgan and Unalga Island.
Clubbing Rocks .....	Between Clubbing Rocks and Cherni Island.
Outer Island .....	Wildcat Pass between Rabbit and Ragged Islands.

(3) *Penalties.* (i) Any person who violates this section or the Act is subject to the penalties specified in section 11 of the Act, and any other penalties provided by law.

(ii) Any vessel used in violation of this subsection or the Endangered Species Act is subject to forfeiture under section 11(e)(4)(B) of the Act.

(e) *Protective regulations for killer whales in Washington—(1) Applicability.* The following restrictions apply to all motorized and non-motorized vessels in inland waters of the United States east of a line connecting Cape Flattery, Washington (48°23'10" N./124°43'32" W.), Tatoosh Island, Washington (48°23'30" N./124°44'12" W.), and Bonilla Point, British Columbia (48°35'30" N./124°43'00" W.) and south of the U.S./Canada inter-

national boundary. The shoreline boundary is the charted mean high water line cutting across the mouths of all rivers and streams.

(2) *Prohibitions.* Except as provided in paragraph (e)(3) of this section, it is unlawful for any person subject to the jurisdiction of the United States to:

(i) Cause a vessel to approach, in any manner, within 200 yards (182.9 m) of any killer whale.

(ii) Position a vessel to be in the path of any killer whale at any point located within 400 yards (365.8 m) of the whale. This includes intercepting a killer whale by positioning a vessel so that the prevailing wind or water current carries the vessel into the path of the whale.

(3) *Exceptions.* The following exceptions apply to this section:

(i) The prohibitions of paragraph (e)(2) of this section do not apply to

(A) Federal Government vessels operating in the course of their official duty or state and local government vessels when engaged in official duties involving law enforcement, search and rescue, or public safety.

(B) Vessels participating with a Vessel Traffic Service (VTS) and following a Traffic Separation Scheme or complying with a VTS Measure of Direction. This also includes support vessels escorting ships in the traffic lanes, such as tug boats.

(C) Vessels engaged in an activity, such as scientific research, authorized through a permit issued by the National Marine Fisheries Service under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar National Marine Fisheries Service authorization.

(D) Vessels lawfully engaged in commercial or treaty Indian fishing that are actively setting, retrieving, or closely tending fishing gear.

(E) Vessel operations necessary to avoid an imminent and serious threat to a person, vessel or the environment, including when necessary for overall safety of navigation and to comply with the Navigation Rules.

(ii) [Reserved]

(4) *Affirmative defense.* In connection with any action alleging a violation of the prohibitions of paragraph (e)(2) of this section, any person claiming the benefit of any exception listed in paragraph (e)(3) of this section has the burden of raising, pleading, and proving such affirmative defense.

(b) [Reserved]

[64 FR 14066, Mar. 23, 1999, as amended at 66 FR 29509, May 31, 2001; 69 FR 69537, Nov. 30, 2004; 70 FR 1832, Jan. 11, 2005; 76 FR 20890, Apr. 14, 2011; 78 FR 66169, Nov. 4, 2013]

**§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.**

(a) Shrimp fishermen in the southeastern United States and the Gulf of Mexico who comply with rules for threatened sea turtles specified in § 223.206 of this chapter will not be subject to civil penalties under the Act for

incidental captures of endangered sea turtles by shrimp trawl gear.

(b) Summer flounder fishermen in the Summer flounder fishery-sea turtle protection area who comply with rules for threatened sea turtles specified in § 223.206 of this chapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by summer flounder gear.

(c) Special prohibitions relating to sea turtles are provided at § 223.206(d).

[64 FR 14066, Mar. 23, 1999, as amended at 66 FR 44552, Aug. 24, 2001; 66 FR 67496, Dec. 31, 2001; 68 FR 8471, Feb. 21, 2003; 69 FR 18453, Apr. 7, 2004; 72 FR 31757, June 8, 2007]

**§ 224.105 Speed restrictions to protect North Atlantic Right Whales.**

(a) The following restrictions apply to: All vessels greater than or equal to 65 ft (19.8 m) in overall length and subject to the jurisdiction of the United States, and all other vessels greater than or equal to 65 ft (19.8 m) in overall length entering or departing a port or place subject to the jurisdiction of the United States. These restrictions shall not apply to U.S. vessels owned or operated by, or under contract to, the Federal Government. This exemption extends to foreign sovereign vessels when they are engaging in joint exercises with the U.S. Department of the Navy. In addition, these restrictions do not apply to law enforcement vessels of a State, or political subdivision thereof, when engaged in law enforcement or search and rescue duties.

(1) Southeast U.S. (south of St. Augustine, FL to north of Brunswick, GA): Vessels shall travel at a speed of 10 knots or less over ground during the period of November 15 to April 15 each year in the area bounded by the following: Beginning at 31°27'00.0" N-080°51'36.0" W; thence west to charted mean high water line then south along charted mean high water line and inshore limits of COLREGS limit to a latitude of 29°45'00.0" N thence east to 29°45'00.0" N-080°51'36.0" W; thence back to starting point. (Fig. 1).

(2) Mid-Atlantic U.S. (from north of Brunswick, Georgia to Rhode Island): Vessels shall travel 10 knots or less over ground in the period November 1 to April 30 each year: