attainment date of November 15, 2005. EPA also has determined that the Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area is not subject to the imposition of the section 185 penalty fees.

Subpart NN—Pennsylvania

■ 5. Section 52.2037 is amended by adding paragraph (n) to read as follows:

§ 52.2037 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(n) Based upon EPA's review of the air quality data for the 3-year period 2003 to 2005, EPA has determined that the Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. EPA also has determined that the Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area is not subject to the imposition of the section 185 penalty fees.

Subpart VV—Virginia

■ 6. Section 52.2428 is amended by adding paragraph (e) to read as follows:

§ 52.2428 Control Strategy: Carbon monoxide and ozone.

* * * * *

(e) Based upon EPA's review of the air quality data for the 3-year period 2003 to 2005, EPA has determined that the Washington, DC severe 1-hour ozone nonattainment area attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. EPA also has determined that the Washington, DC severe 1-hour ozone nonattainment area is not subject to the imposition of the section 185 penalty fees.

[FR Doc. E8–16475 Filed 7–24–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070917520–8831–03]

RIN 0648–AW06

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that implements Amendment 89 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) to establish Bering Sea habitat conservation measures. Amendment 89 prohibits nonpelagic trawling in certain waters of the Bering Sea subarea to protect bottom habitat from the potential adverse effects of nonpelagic trawling. Amendment 89 also establishes the Northern Bering Sea Research Area for studying the impacts of nonpelagic trawling on bottom habitat. This rule is necessary to protect portions of the Bering Sea subarea bottom habitat from the potential effects of nonpelagic trawling and to provide the opportunity to further study the effects of nonpelagic trawling on bottom habitat. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective August 25, 2008.

ADDRESSES: Copies of the FMP amendment, maps of the Bering Sea subarea nonpelagic trawl closure areas and Northern Bering Sea Research Area, and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for this action may be obtained from NMFS Alaska Region, P. O. Box 21668, Juneau, AK 99802, or from the Alaska Region NMFS website at *http://www.alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Bering Sea and Aleutian Islands Management Area (BSAI) groundfish fisheries are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMP appear at 50 CFR parts 679 and 680. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background

In June 2007, the Council recommended closing areas in the Bering Sea subarea to nonpelagic trawling as a precautionary measure to prevent the potential adverse effects of nonpelagic trawling on portions of bottom habitat. These areas are (1) the Bering Sea Habitat Conservation Area (BSHCA); (2) the St. Lawrence Island Habitat Conservation Area; (3) the St. Matthew Island Habitat Conservation Area; (4) the Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area; and (5) the Northern Bering Sea Research Area (NBSRA). These closed areas include locations that have not been previously fished with nonpelagic trawl gear, nearshore bottom habitat areas that support subsistence marine resources, blue king crab habitat, and a research area for further study of the potential impacts of nonpelagic trawling on bottom habitat. The closed areas that extend into State of Alaska waters apply to federally permitted vessels operating in State of Alaska waters.

Detailed background information for each of the closed areas is in the preamble to the proposed rule (73 FR 12357, March 7, 2008). The Council submitted Amendment 89 for review by the Secretary of Commerce, and a notice of availability of the amendment was published in the **Federal Register** on February 27, 2008 (73 FR 10415), with comments on the amendment invited through April 28, 2008. The comments on the proposed rule were invited through April 21, 2008. The FMP was approved by the Secretary of Commerce on May 19, 2008.

Regulatory Amendments

This final rule adds definitions to § 679.2 and new coordinate tables and figures for the areas closed to nonpelagic trawling and the research area. The definitions for the BSHCA; NBSRA; and Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area refer to Tables 42, 43, and 44, and Figures 16, 17, and 21 to part 679, respectively, because of the complexity of the area boundaries. The definitions for the St. Lawrence Island Habitat Conservation Area and St. Matthew Island Habitat Conservation Area refer to Tables 45 and 46 to part 679 for the area boundaries; no figures are necessary due to the simple shapes of these closures.

This final rule also adds § 679.22(a)(16) through (20) to close the BSHCA; St. Matthew Island Habitat Conservation Area; St. Lawrence Island Habitat Conservation Area; Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area; and NBSRA to nonpelagic trawling.

Comments and Responses

NMFS received eight comments from individuals, the Council, and groups on the notice of availability for Amendment 89 (73 FR 10415, February 27, 2008). NMFS received 6,266

comments from individuals, the Council, and organizations on the proposed rule (73 FR 12357, March 7, 2008). The majority of comments on the proposed rule were form letters in support of the action. A large number of those comments came from individuals located outside the United States. No changes were made in the final rule from the proposed rule. The following summarizes and responds to the 19 unique comments received on the notice of availability for the FMP amendment and the proposed rule.

Comment 1: Fishing quotas are too high and allow marine life to starve and to be decimated. People in the higher economic classes should reduce their consumption of fish to allow the seas to restock, and their bounty to rebound.

Any fishing activity that competes for prey with sensitive, endangered, or threatened species, or adversely modifies habitat that supports these species should be prohibited. All trawling should be prohibited because it decimates the sea floor for 50 years, is environmentally destructive, and is an unsustainable practice for short term profits. All nonpelagic trawling in the Bering Sea should be prohibited because not doing so inadequately protects unique benthic species and habitats and the sensitive, threatened, and endangered species that depend on such habitat and that are increasingly imperiled in the Bering Sea ecosystem. The proposed rule is grandfathering nonpelagic trawling in all areas where such activity has already occurred. The impacts in the current fishing locations should be considered the baseline for protection of the Bering Sea, not the ceiling. There are other fishing methods less invasive than nonpelagic trawling that achieve higher productivity and protect our oceans, making sure we will not overfish our resources. No one needs trawling.

Response: Fishing quotas are based on the best available science to allow for sustainable harvest of target species and in consideration of potential impacts on the marine ecosystem. For the Alaska groundfish fisheries, no information indicates that any target species are being overfished or that marine life is starved or decimated due to groundfish fishing activities.

Trawling can have various effects on bottom habitat depending on the type of trawl gear and the bottom features where fishing occurs. Trawl gear can be either pelagic, which is used primarily in the water column or nonpelagic, which is used on the bottom. Recovery times for a trawled area can vary depending on the type of bottom habitat and organisms impacted. More information about the impacts of trawling on bottom habitat is available in the EA/RIR/FRFA for this action (see **ADDRESSES**) and in the Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska, available from the NMFS Alaska Region website at *http://www.fakr.noaa.gov/habitat/seis/efheis.htm.*

Nonpelagic trawling is the most effective method for harvesting certain groundfish species in the Bering Sea. These species include flatfish and other species which occur on or near the ocean bottom. A complete ban on the use of trawl gear throughout the Bering Sea is not supported by the best scientific information available. Selective restrictions on the use of nonpelagic trawl gear where impacts are most likely to be a concern are more appropriate. The Council and NMFS have implemented restrictions on nonpelagic trawling to reduce the potential impact of nonpelagic trawl gear on certain bottom habitat in the Aleutian Islands subarea and in the Gulf of Alaska (71 FR 36694, June 28, 2006) and numerous nonpelagic trawl closures are already in effect for the Bering Sea, which are further described in the EA/RIR/FRFA (see **ADDRESSES**). This final rule implements restrictions on nonpelagic trawl gear to protect certain bottom habitats in the Bering Sea subarea, taking into consideration protection of habitat that supports sensitive, endangered, and threatened species.

Comment 2: We support protecting the northern Bering Sea bottom habitat from the destructive effects of nonpelagic trawling. The Bering Sea habitat conservation measures would allow for the management of the fisheries in a sustainable manner, provide for research on the potential effects of nonpelagic trawling on bottom habitat, account for the socioeconomic effects on fishery participants, and include consideration of subsistence resource users. Religious and cultural heritage combine to compel our protection of our natural resources. The world depends on healthy oceans which are necessary for our life and well-being. The Bering Sea bottom habitat is part of the marine ecosystem that supports marine mammals, seabirds, and invertebrates, which include important subsistence and commercial resources. It is important to prevent bottom trawling from expanding into areas that have not been previously bottom trawled, especially in consideration of potential changes from global warming.

The changing global climate and increasing world population make it important to address environmental threats that can be controlled, such as habitat destruction. Bottom trawling is the most destructive form of fishing on bottom habitat. Preservation of delicate bottom habitat ecosystems is vital for the long-term survival of the fishing industry and for species dependent on the marine resources supported by bottom habitat. Grey whales, spectacled eiders, Pacific walruses, snow crabs, and other species depend on the bottom habitat protected by this action. Protection of the highly productive Bering Sea habitat may provide a buffer for other high latitude marine environments that are under stress. This action is a significant investment in a more stable and hopeful future for our children and grandchildren of the world. It sets a good example for our children to care for the planet and sends a message that adults care about preserving the marine environment for our children. This action is precautionary and the right thing to do.

Response: NMFS notes the commenter's support.

Comment 3: The Council submitted comments and recommends that the preamble to the final rule describe the Council's intent regarding future actions for nonpelagic trawl management in the Bering Sea. The Council intends future adjustment to the NBSRA boundary with the implementation of a modified gear requirement for the flatfish trawl fishery that would minimize potential impacts on bottom habitat. This potential future adjustment would open a portion of the NBSRA to nonpelagic trawling. The adjustment to the NBSRA boundary to open this area is shown in Figure 1.

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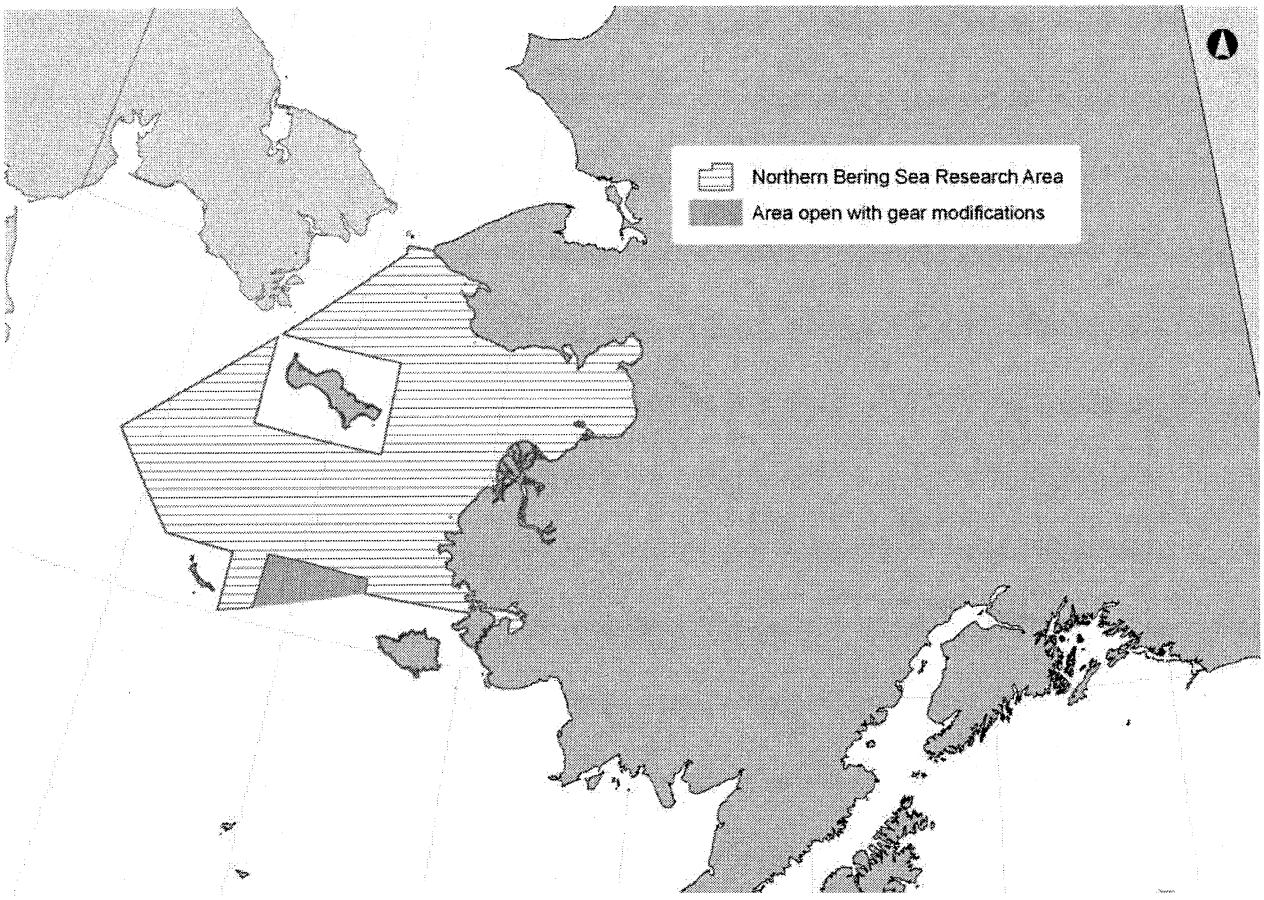

Figure 1. Council Recommended Open Area of the Northern Bering Sea Research Area with Implementation of Gear Modification Requirements

Because the area to be opened with flatfish trawl gear modification requirements may contain high concentrations of yellowfin sole and low concentrations of other bycatch species, the flatfish industry has identified this area as important to its fishery. In June 2008, the Council received a report on the progress of developing modified gear for flatfish fishing that will reduce the potential impacts on bottom habitat. Analysis supporting the gear modification requirement and adjustment to the NBSRA will supplement the existing EA/RIR/FRFA for the Bering Sea Habitat conservation measures (see **ADDRESSES**).

Response: Any potential changes in the gear requirements for the flatfish fishery would require analysis of the potential environmental and socioeconomic impacts of the action. NMFS will work with the Council to ensure the appropriate information is available to inform the Council's final recommendation on gear modification. If the Council recommends a modified gear requirement for the flatfish fishery and the adjustment to the NBSRA shown in Figure 1, NMFS will include these recommendations in future proposed rulemaking for this action. The supporting analysis for this potential future action would include information from the EA/RIR/FRFA for this final rule and any relevant new information to inform the decision making.

Comment 4: To protect local communities' resources, we support permanent closure of the area considered for opening in connection with the implementation of modified gear for the flatfish fishery (Figure 1).

Response: This final rule implements the closure of the NBSRA which includes the area considered for opening with the potential future implementation of modified gear for the flatfish fishery (Figure 1). The Council has expressed its intent to open this area to commercial fishing with implementation of a modified gear requirement (Comment 3).

Any concerns about opening this area should be expressed to the Council while the modified gear requirement recommendation is being developed. The Council received a report on modified gear research at its June 2008 meeting (73 FR 26964, May 12, 2008).

The Council recommended that staff develop an analysis of a gear modification requirement, including consideration of opening the area identified in Figure 1. The gear modification requirement and any proposed adjustments to the NBSRA boundary will require analysis and rulemaking to implement, including the public process provided by the Council in developing its recommendations to NMFS.

Comment 5: The NBSRA is to be closed to commercial nonpelagic trawling only during the development and implementation of the research plan to study the nonpelagic trawling effects on bottom habitat. The intent is to develop an adaptively managed commercial nonpelagic trawl fishery in the area based on information from the nonpelagic trawling effects research.

Response: This final rule closes the NBSRA to nonpelagic trawl fishing unless conducted under an exempted fishing permit (EFP). Before issuance, an EFP application for nonpelagic trawling in the NBSRA must meet the requirements of the research plan adopted by the Council. When the Council has received enough information from the research and EFP data, it may develop an adaptive management plan and propose regulatory amendments that would allow commercial nonpelagic trawling in the NBSRA. Any changes to the fishing restrictions in the NBSRA would require proposed and final rulemaking, and supporting analysis.

Comment 6: In June 2007, The Council recommended review schedules for a boundary closure and research plan. The Council recommended that in four years after the Council's Bering Sea Habitat conservation measures recommendation (June 2007), the southern boundary of the NBSRA be reviewed by the Council for possible adjustments based on a report by the fishing industry and Alaska Village Council Presidents workgroup. The Council also recommended at that time that the research plan identifying effects of nonpelagic trawl gear on bottom habitat be completed. The Council would review the plan within 24 months of implementation of this final rule. Based on public comments received in April 2008, the Council recommends changing the schedules for the Council's review of the NBSRA boundary and the research plan to June 2011.

Response: NMFS supports the Council's recommended changes to the review schedules for the NBSRA boundary and the research plan.

Comment 7: The development of the research plan for the NBSRA should include tribal and other stakeholder input to address protection of species and subsistence resources that depend on bottom habitat. Any research in the NBSRA conducted with bottom trawl gear would be only for the testing of protections for bottom habitat. These tests would be conducted in a manner that would minimize damage to bottom habitat.

Response: NMFS agrees that input from all stakeholders is important in the development of the NBSRA research plan. The development of the plan will proceed through the Council decision process. That process provides advance public notice and opportunity to provide testimony before decisions are made. The research plan will be developed by the Alaska Fisheries Science Center through the Council process. The actual process for developing the plan is yet to be determined, but public involvement will be an important component.

The Council recommended that the plan investigate the effects of nonpelagic trawling on bottom habitat and consider and identify protection measures for bottom habitat. Research data can inform the further development and testing of protection measures. Some habitat damage would be necessary to understand effects, but damage would be limited to the extent needed for scientifically valid results.

Comment 8: Areas closed to nonpelagic trawl gear should not be opened under exempted fishing permits (EFP) because many studies of fishing impacts on bottom habitat already exist.

Response: Fishing impacts on bottom habitat research are specific to the locations and the gear types tested. While research on the effects of fishing on bottom habitat has been conducted worldwide, more needs to be known about the habitat in the NBSRA before the results of research elsewhere can be applied to the conditions occurring in the NBSRA. By establishing the NBSRA, information gathered under EFPs would be directly applicable to nonpelagic trawl fisheries management in the Bering Sea in areas with similar features as the NBSRA. Because the first contact of a nonpelagic trawl is likely to cause the largest impact on bottom habitat, it is important to conduct bottom habitat effects research in an area where nonpelagic trawling has not occurred. The closure of the NBSRA and the research fishing planned in this area should provide the information necessary to effectively manage nonpelagic trawling in similar habitats of the Bering Sea.

Comment 9: Nonpelagic trawl closures also should include waters of Bristol Bay to protect spawning habitat for yellowfin sole and to protect subsistence resources. The potential effects of trawlers on spawning habitat should be studied.

Response: Under § 679.22(a)(9), all trawling for groundfish is prohibited in most of the Bristol Bay area, including nearshore waters that may include yellowfin sole spawning habitat. Directed fishing for groundfish by vessels using trawl gear in Bristol Bay, as described in the current edition of NOAA chart 16006, is closed at all times in the area east of 162°00′ W. long. The only exception is a portion of the Nearshore Bristol Bay Trawl Area that is open to trawling from 1200 hours A.l.t., April 1 to 1200 hours A.l.t., June 15 of each year (Figure 2).

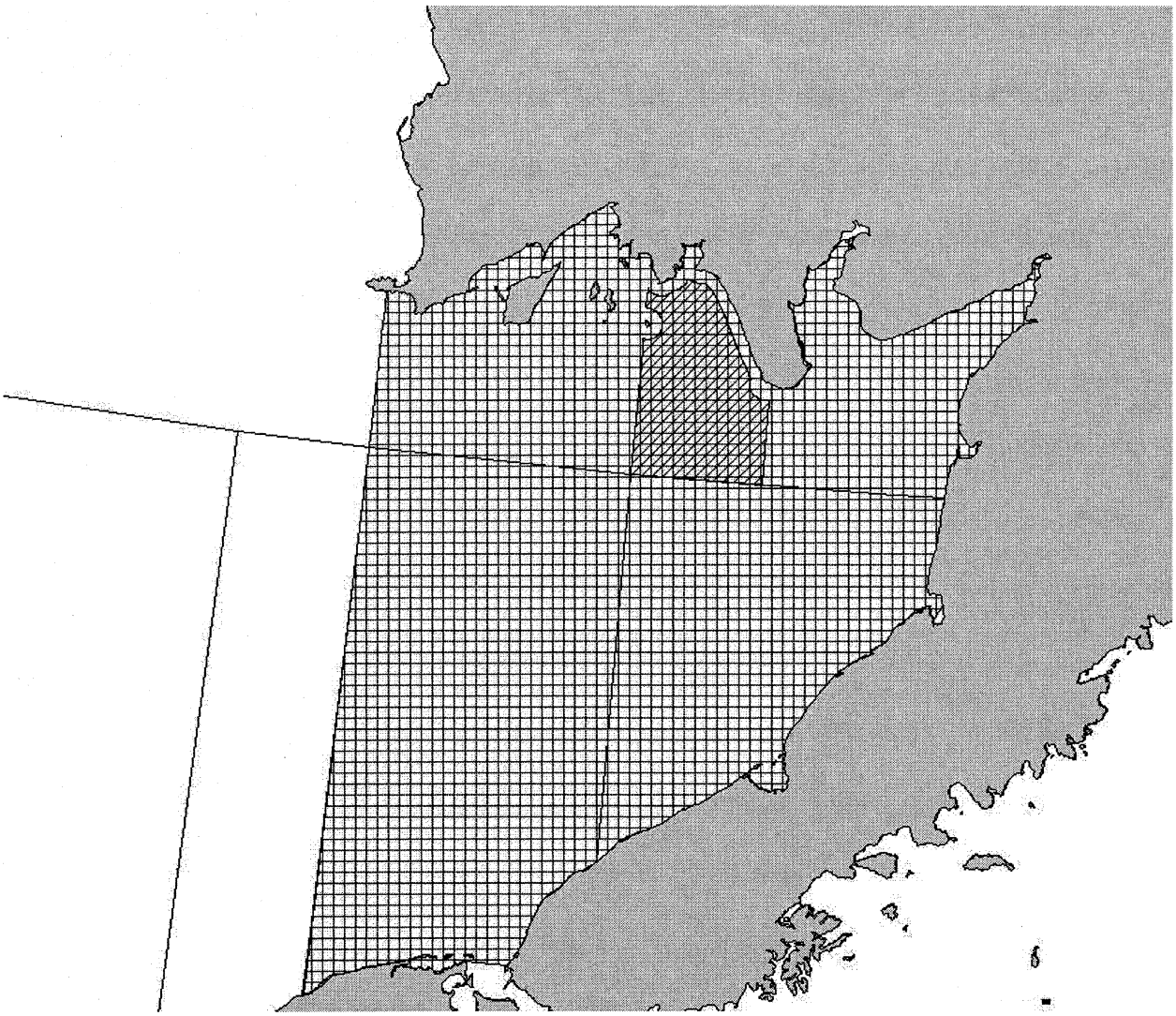

Figure 2. Nearshore Bristol Bay Trawl Closure Area. The square hatched area is closed to trawling year round. The diagonally hatched area is open to trawling April 1 to June 15.

According to the 2007 Stock Assessment and Fishery Evaluation Report for Bering Sea and Aleutian Islands yellowfin sole, commercial bottom trawlers have commonly found high concentrations of yellowfin sole in areas such as near Togiak Bay (Low and Narita, 1990) and in more recent years from Kuskokwim Bay to just south of Nunivak Island (NPFMC 2007). Yellowfin sole spawning likely occurs in the area open to trawling between April 1 and June 15. The impacts of trawling in this area on yellowfin sole were considered in the Environmental Impact Statement (EIS) for Essential Fish Habitat Identification and Conservation and were thought to be minimal. The EIS is available from the NMFS Alaska Region website at *http://www.fakr.noaa.gov/habitat/seis/efheis.htm*. The trawl closures currently in place in Bristol Bay protect areas that are known to support yellowfin sole spawning locations; and therefore, no additional closures with this action are necessary to protect yellowfin sole in Bristol Bay. With nearly the entire bay closed to trawling, no additional closures are needed to protect bottom habitat in Bristol Bay that may support subsistence resources.

The NBSRA will provide the opportunity to study the effects of nonpelagic trawling on bottom habitat and may include research on the potential effect of nonpelagic trawling specifically on yellowfin sole, if yellowfin sole spawning occurs in the NBSRA.

Comment 10: We recommend the protection areas around St. Lawrence, St. Matthew, and Nunivak Islands, and Kuskokwim Bay be enlarged, and protection areas around Little Diomede,

King Island, and Sledge Island be considered with this action.

Response: This action implements the Council recommendations, which were developed by working with the fishing industry and subsistence resource users. The Council is scheduled to revisit the boundaries of the closure areas in this final rule in 2011. Any changes to the Bering Sea habitat conservation measures, including the expansion of existing closures and closure area additions could be proposed and analyzed for consideration by the Council between now and 2011. NMFS recommends suggested changes for consideration in 2011 be provided to the Council at the earliest opportunity. This will facilitate careful development and analysis of any proposed changes to the Bering Sea habitat conservation measures implemented by this final rule.

Comment 11: The decision that locates the BSHCA border along the shelf break is based on preserving the nonpelagic trawl fleet's development of the arrowtooth flounder fishery, rather than a projected movement of arrowtooth flounder due to global warming effects. NMFS Bering Sea surveys show a large amount of arrowtooth flounder near the shelf break and slope of the Bering Sea. The location of this eastern border allows access to the arrowtooth flounder found in this area, permitting the arrowtooth flounder fishery to further develop.

Response: NMFS agrees.

Comment 12: NMFS and the Council did not conduct appropriate tribal consultation prior to the development of this actions conservation area boundaries. A workgroup of some subsistence users should not be considered ''tribal consultation.''

Response: Executive Order 13175 on consultation and coordination with Indian tribal governments establishes the requirement for regular and meaningful consultation and collaboration with Indian tribal governments in the development of federal regulatory practices that significantly or uniquely affect their communities; to reduce the imposition on unfunded mandates on Indian tribal governments; and to streamline the application process for and increase the availability of waivers to Indian tribal governments. This Executive Order requires federal agencies to have an effective process to involve and consult with representatives of Indian tribal governments in developing regulatory policies and prohibits regulations that impose substantial, direct compliance costs on Indian tribal communities.

NMFS agrees that a subsistence users workgroup does not substitute for tribal consultation. To facilitate tribal consultation, NMFS wrote to all tribal governments and Alaska native corporations notifying them of the proposed action and invited requests for tribal consultation under Executive Order 13175. NMFS also included a copy of the proposed rule in the correspondence. NMFS did not receive any requests for tribal consultation on this action. NMFS also agrees that commencing tribal consultation early in fisheries management actions is preferred. NMFS encourages tribal entities to enter into the Council process. Also see response to Comment 13.

Comment 13: The Council and NMFS should begin tribal consultation before the decision making process begins. NMFS and the Council should create suitable and binding tribal consultation protocols, immediately.

Response: NMFS agrees that Alaska Native, community, and stakeholder involvement should occur early in the process of developing fishery management action. The Council is in the process of developing tribal outreach protocols. In 2004, the Council revised its Alaska groundfish management policy including the following management objectives focused on increasing Alaska Native participation in fisheries management:

- Continue to incorporate local and traditional knowledge in fishery management;
- Consider ways to enhance collection of local and traditional knowledge from communities, and incorporate such knowledge in fishery management where appropriate; and
- Increase Alaska Native participation and consultation in fishery management.

The Council reviewed a discussion paper on meeting these objectives at its June 2008 meeting. The discussion paper includes proposed protocols for formal and informal consultation with Alaska Natives, communities, and stakeholders on fisheries management actions and the early identification of potentially affected communities to ensure consultation in the early stages of fishery management action development. Early involvement during the development of Council recommendations is an effective way to ensure Alaska Native, community, and stakeholder issues are considered. More information on this activity is available from the Council's website at *http://www.fakr.noaa.gov/npfmc/default.htm.*

Also see response to Comment 12.

Comment 14: Village organizations should be given the opportunity to review information relevant to the decision making process. NMFS and the Council should provide them specific lists of species that may be impacted by the action and their population, migration patterns, biology, and species' use of the Bering Sea habitat.

Response: This information is available in the EA supporting this action (see **ADDRESSES**). Chapter 3 provides the status including biology of all species that may be impacted by the action. Chapter 4 analyzes the action's impact on these species and their habitats. Since March 2007, the EA has been available to the public through the Council's website or at Council meetings.

Comment 15: NMFS should immediately start a process to protect the recently documented deep sea coral and sponge habitats of the Pribilof and Zhemchug Canyons of the Bering Sea from adverse fishing effects. In 2007, Greenpeace and a NMFS researcher used a submersible vessel to examine the Zhemchug and Pribilof Canyons, identifying coral and sponge habitats located in these canyons.

Response: The Council recommends habitat protection measures to NMFS for those locations where the Council has determined protections from the potential effects of fishing are appropriate based on the information available. The Council is scheduled to review its essential fish habitat (EFH) management in 2011, when information regarding new locations that may need additional protection could be submitted for consideration.

Comment 16: NMFS should consider all the people impacted by this action including those in the fishing and tourism industries. Everyone in Alaska would benefit if there was more tourism and less fishing.

Response: Along with impacts on the fisheries, NMFS considered the impacts on the passive use of the Bering Sea resources in the Regulatory Impact Review for this action (see **ADDRESSES**). Tourism in the Bering Sea region is not precluded by this action. Tourism may benefit through enhanced bottom habitat protection that may support wildlife populations of interest to tourists. Many Alaskans depend on either fishing, tourism, or both; and the reduction of either type of activity would impact those who depend on these industries.

Comment 17: It is important for NMFS to prevent nonpelagic trawling from expanding into the Arctic Ocean.

Response: This action is limited to the Bering Sea subarea, but the Council is

developing a fishery management plan for the Arctic Ocean. The Council recognizes that little is known about the fish stocks in the Arctic Ocean, and more information is needed for sustainable management of commercial fishing in the Beaufort and Chukchi Seas of the Arctic Ocean. Therefore, the Council is considering prohibiting all or nearly all commercial fishing in the Arctic Ocean until information indicates that sustainable fishery management is possible. See the Council's website at *http://www.fakr.noaa.gov/npfmc/current_issues/Arctic/arctic.htm* for more information.

Comment 18: This action is overly restrictive. The proposed action is unnecessary because no current activities occur that warrant protection measures. The action may prevent sustainable fishery options in the future. Any protection action should be specific to highly sensitive habitats and address actual problems.

The Bering Sea offers high energy mud and sand bottoms that can be safely trawled and continue to be productive. The current warmer water temperatures supporting finfish may change and result in fisheries that must target other species like shrimp that are effectively harvested by trawl gear. The proposed action would prevent development of a future shrimp trawl fishery that could have low bycatch and could be sustainable.

Response: The nonpelagic trawling closures in this action affect only the groundfish fisheries and are a precautionary approach to protecting Bering Sea bottom habitat. This final rule does not apply to shrimp fishing by any method in the Bering Sea. This action meets the Council's management objectives for the Alaska groundfish fisheries stated in the FMP.

The effects of nonpelagic trawling for groundfish on bottom habitat are relative to the sediments contacted by trawl gear. Effects are further discussed in the EA/RIR/FRFA for this action (see **ADDRESSES**). Little is known about the characteristics of the bottom sediments in most areas being closed to nonpelagic trawling. Consequently, protection measures reduce the potential for adverse effects by nonpelagic trawl gear. Because the first pass of a nonpelagic trawl is most likely to damage bottom habitat, it is prudent to protect those areas that are not already actively trawled. Results from the research in the NBSRA may provide bottom habitat effects information that can inform the management of nonpelagic trawling for groundfish in the Bering Sea subarea and may support future adjustments to the closure areas to allow for further development of groundfish fisheries.

Comment 19: NMFS is urged to continue efforts to define habitat in the Bering Sea.

Response: This action establishes protection areas for bottom habitat in the Bering Sea and does not define EFH. In 2006, the FMPs for the Alaska fisheries were updated with new descriptions of essential fish habitat for all of the managed species. NMFS continues to gather information regarding bottom habitat and will work with the Council to continue managing the fisheries based on the best available scientific information. The Council is scheduled to review EFH in 2011. Additional information regarding EFH and bottom habitat research is available from the NMFS Alaska Region website at *http://www.fakr.noaa.gov/habitat/efh.htm*.

Classification

The Administrator, Alaska Region, NMFS, determined that the FMP Amendment 89 is necessary for the conservation and management of the groundfish fisheries and that it is consistent with the Magnuson–Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA describes the economic impact of this final rule on small entities. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. Descriptions of the action, the reasons it is under consideration, and its objectives and legal basis are included earlier in the preamble and in the **SUMMARY** section of the preamble. A copy of the FRFA is available from NMFS (see **ADDRESSES**).

A summary of the IRFA was provided in the classification section to the proposed rule (73 FR 12357, March 7, 2008), and the public was notified of how to obtain a copy of the IRFA. The public comment period ended on April 21, 2008. No comments were received on the IRFA or on the economic impacts of the rule.

Fishing vessels, both catcher vessels and catcher/processors (CPs), are considered small, for RFA purposes, if their gross receipts, from all their economic activities combined, as well as those of any and all their affiliates anywhere in the world, (including fishing in federally-managed non-groundfish fisheries, and in Alaska-managed fisheries), are less than or equal to $4.0 million annually. Further, fishing vessels were considered to be large if they were affiliated with an American Fisheries Act fishing cooperative in 2004. The members of these cooperatives had combined revenues that exceeded the $4.0 million threshold.

The entities that would be directly regulated by this final rule are those vessels that fish for groundfish with nonpelagic trawl gear in the eastern Bering Sea off Alaska. Section 5.6 of the RIR provides a description of these fisheries and estimates the numbers of unique vessels that presently participate (see **ADDRESSES**). Approximately 22 to 24 vessels have participated in the nonpelagic trawl CP fishery off Alaska in recent years. Based on analysis of total annual gross revenues, two of the vessels should be classified as small entities. Six Community Development Quota groups and their associated communities are considered small entities and are directly regulated by this action because their allocations of BSAI species harvested by nonpelagic trawl gear occur within the areas defined by this action.

This regulation does not impose new recordkeeping and reporting requirements on the regulated small entities.

The FRFA did not reveal any Federal rules that duplicate, overlap, or conflict with the action.

The Council considered three alternatives and five options to the alternatives for this action. The suite of alternatives and options were developed in consultation with members of the nonpelagic trawl CP fleet to minimize potential adverse economic effects on directly regulated entities. This action is the preferred alternative and options, which reflect the least burdensome of management structures available in terms of directly regulated small entities, while fully achieving the conservation and management purposes articulated by the Council.

Alternative 1, the no action alternative, would not meet the objectives of this action. This alternative would allow nonpelagic trawling to expand into areas not previously trawled and would not meet the objective to protect certain bottom habitat in the Bering Sea subarea. Alternative 3, which would modify flatfish trawl gear to reduce contact with the bottom, was not recommended by the Council at this time because the gear is currently under development, and

gear standards are not yet ready for implementation.

Under Alternative 2 for the BSHCA, the boundaries of the closure area were established in locations that have not been trawled more than once and are not likely to be trawled in the future. In addition, the boundary of the BSHCA was adjusted to allow for potential future development of the arrowtooth flounder fishery. These features of the BSHCA mitigate potential adverse economic effects on small entities by allowing continued fishing where substantial amounts of fishing have already occurred and to allow for future expansion of the arrowtooth flounder fishery.

The boundaries for the nonpelagic trawl closures under Options 1, 3, 4, and 5 also were developed in consultation with members of the nonpelagic trawl CP fleet. Under Options 1 and 5, the waters near St. Matthew and St. Lawrence Islands were not substantially trawled and are not likely to be trawled in the future, so the closures in these areas are not likely to result in an adverse economic effect on small entities. Option 2 closed waters near Nunivak Island and Etolin Strait but would not close waters within Kuskokwim Bay to nonpelagic trawling. Option 3 expanded on the closures under Option 2 by establishing the Nunivak Island, Etolin Strait, and Kuskokwim Bay closure boundaries. Option 3 closures were carefully negotiated between members of the nonpelagic trawl CP fleet and some users of the subsistence marine resources in the area. Adjustments were made to the boundaries to ensure the flatfish fleet had access to concentrations of flatfish while still maintaining overall protection to bottom habitat from the potential effects of nonpelagic trawling. These boundary adjustments reduce potential adverse economic effects on small entities participating in the flatfish trawl fishery.

Under Option 4 for the NBSRA, the southern boundary of the area was also based on consultation with members of the affected trawl CP fleet to ensure the closure would not prevent fishing in areas currently fished and allowed for some northern movement of the fleet if fish stocks also move north in response to global warming. The southern boundary of the NBSRA would mitigate any potential adverse economic impact on small entities by allowing continued fishing in locations historically fished and permitting some flexibility with any future movement of fish stocks.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS Alaska Region has developed a website that provides easy access to details of this final rule, including links to the final rule, maps of closure areas, and frequently asked questions regarding essential fish habitat. The relevant information available on the website is the Small Entity Compliance Guide. The website address is *http://www.fakr.noaa.gov/habitat/efh.htm*. Copies of this final rule are available upon request from the NMFS, Alaska Regional Office (see **ADDRESSES**).

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 109–447 (118 Stat. 3267), extends the consultation requirements of the Executive Order to Alaska Native corporations.

NMFS contacted tribal governments and Alaska Native corporations, which may be affected by the action, provided them with a copy of the proposed rule, and offered them an opportunity to further consult. No tribal governments or Alaska Native corporations requested further tribal consultation for this action.

References

Low, L. and R.E. Narita. 1990. Condition of groundfish resources in the Bering Sea-Aleutian Islands region as assessed in 1988. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-F/NWC–178, 224 p.

North Pacific Fishery Management Council (NPFMC). 2007. Stock Assessment and Fishery Evaluation Report. November 2007. Available from *http://www.afsc.noaa.gov/REFM/stocks/assessments.htm*.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 21, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

■ 2. In § 679.2, add in alphabetical order definitions for ''Bering Sea Habitat Conservation Area'', ''Northern Bering Sea Research Area'', ''Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area'', ''St. Lawrence Island Habitat Conservation Area'', and ''St. Matthew Island Habitat Conservation Area'' to read as follows:

§ 679.2 Definitions.

* * * * *

Bering Sea Habitat Conservation Area means a habitat protection area specified at Table 42 and Figure 16 to this part.

* * * * *

Northern Bering Sea Research Area means a habitat research area specified at Table 43 and Figure 17 to this part.

Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area means a habitat protection area specified at Table 44 and Figure 21 to this part.

* * * * *

St. Lawrence Island Habitat Conservation Area means a habitat protection area specified at Table 45 to this part.

St. Matthew Island Habitat Conservation Area means a habitat protection area specified at Table 46 to this part.

* * * * *

■ 3. In § 679.22, paragraphs (a)(16) through (a)(20) are added to read as follows:

§ 679.22 Closures.

(a) * * *

(16) *Bering Sea Habitat Conservation Area.* No federally permitted vessel may fish with nonpelagic trawl gear in the Bering Sea Habitat Conservation Area specified at Table 42 and Figure 16 to this part.

(17) *Northern Bering Sea Research Area.* No federally permitted vessel may fish with nonpelagic trawl gear in the Northern Bering Sea Research Area specified at Table 43 and Figure 17 to this part.

(18) *Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area.* No federally permitted vessel may fish with nonpelagic trawl gear in the Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area specified at Table 44 and Figure 21 to this part.

(19) *St. Lawrence Island Habitat Conservation Area.* No federally permitted vessel may fish with nonpelagic trawl gear in the St. Lawrence Island Habitat Conservation Area specified at Table 45 to this part.

(20) *St. Matthew Island Habitat Conservation Area.* No federally permitted vessel may fish with nonpelagic trawl gear in the St. Matthew Island Habitat Conservation Area specified at Table 46 to this part.

* * * * *

■ 4. Tables 42 through 46 are added to part 679 to read as follows:

TABLE 42 TO PART 679—BERING SEA HABITAT CONSERVATION AREA

Longitude		Latitude	
179	19.95W	59	25.15N
177	51.76W	58	28.85N
175	36.52W	58	11.78N
174	32.36W	58	8.37N
174	26.33W	57	31.31N
174	0.82W	56	52.83N
173	0.71W	56	24.05N
170	40.32W	56	1.97N
168	56.63W	55	19.30N
168	0.08W	54	5.95N
170	0.00W	53	18.24N
170	0.00W	55	0.00N
178	46.69E	55	0.00N
178	27.25E	55	10.50N
178	6.48E	55	0.00N
177	15.00E	55	0.00N
177	15.00E	55	5.00N
176	0.00E	55	5.00N
176	0.00E	55	0.00N

TABLE 42 TO PART 679—BERING SEA HABITAT CONSERVATION AREA—Continued

Longitude		Latitude	
172	6.35E	55	0.00N
173	59.70E	56	16.96N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

TABLE 43 TO PART 679—NORTHERN BERING SEA RESEARCH AREA

Longitude		Latitude	
168	7.48W	65	37.48N*
165	1.54W	60	45.54N
167	59.98W	60	45.55N
171	59.92W	60	3.52N
172	0.00W	60	54.00N
174	1.24W	60	54.00N
176	13.51W	62	6.56N
172	24.00W	63	57.03N
172	24.00W	62	42.00N
168	24.00W	62	42.00N
168	24.00W	64	0.00N
172	17.42W	64	0.01N
168	58.62W	65	30.00N
168	58.62W	65	37.48N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines except as noted by * below. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

* This boundary extends in a clockwise direction from this set of geographic coordinates along the shoreline at mean lower-low tide line to the next set of coordinates.

TABLE 44 TO PART 679—NUNIVAK ISLAND, ETOLIN STRAIT, AND KUSKOKWIM BAY HABITAT CONSERVATION AREA

Longitude		Latitude	
165	1.54W	60	45.54N*
162	7.01W	58	38.27N
162	10.51W	58	38.35N

TABLE 44 TO PART 679—NUNIVAK ISLAND, ETOLIN STRAIT, AND KUSKOKWIM BAY HABITAT CONSERVATION AREA—Continued

Longitude		Latitude	
162	34.31W	58	38.36N
162	34.32W	58	39.16N
162	34.23W	58	40.48N
162	34.09W	58	41.79N
162	33.91W	58	43.08N
162	33.63W	58	44.41N
162	33.32W	58	45.62N
162	32.93W	58	46.80N
162	32.44W	58	48.11N
162	31.95W	58	49.22N
162	31.33W	58	50.43N
162	30.83W	58	51.42N
162	30.57W	58	51.97N
163	17.72W	59	20.16N
164	11.01W	59	34.15N
164	42.00W	59	41.80N
165	0.00W	59	42.60N
165	1.45W	59	37.39N
167	40.20W	59	24.47N
168	0.00W	59	49.13N
167	59.98W	60	45.55N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines, except as noted by * below. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

* This boundary extends in a clockwise direction from this set of geographic coordinates along the shoreline at mean lower-low tide line to the next set of coordinates.

TABLE 45 TO PART 679—ST. LAWRENCE ISLAND HABITAT CONSERVATION AREA

Longitude		Latitude	
168	24.00W	64	0.00N
168	24.00W	62	42.00N
172	24.00W	62	42.00N
172	24.00W	63	57.03N

TABLE 45 TO PART 679—ST. LAWRENCE ISLAND HABITAT CONSERVATION AREA—Continued

Longitude	Latitude
172 17.42W	64 0.01N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

TABLE 46 TO PART 679—ST. MATTHEW ISLAND HABITAT CONSERVATION AREA

Longitude	Latitude
172 0.00W	60 54.00N
171 59.92W	60 3.52N
174 0.50W	59 42.26N
174 24.98W	60 9.98N

TABLE 46 TO PART 679—ST. MATTHEW ISLAND HABITAT CONSERVATION AREA—Continued

Longitude	Latitude
174 1.24W	60 54.00N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

■ 5. Figures 16 and 17 are added to part 679 to read as follows:

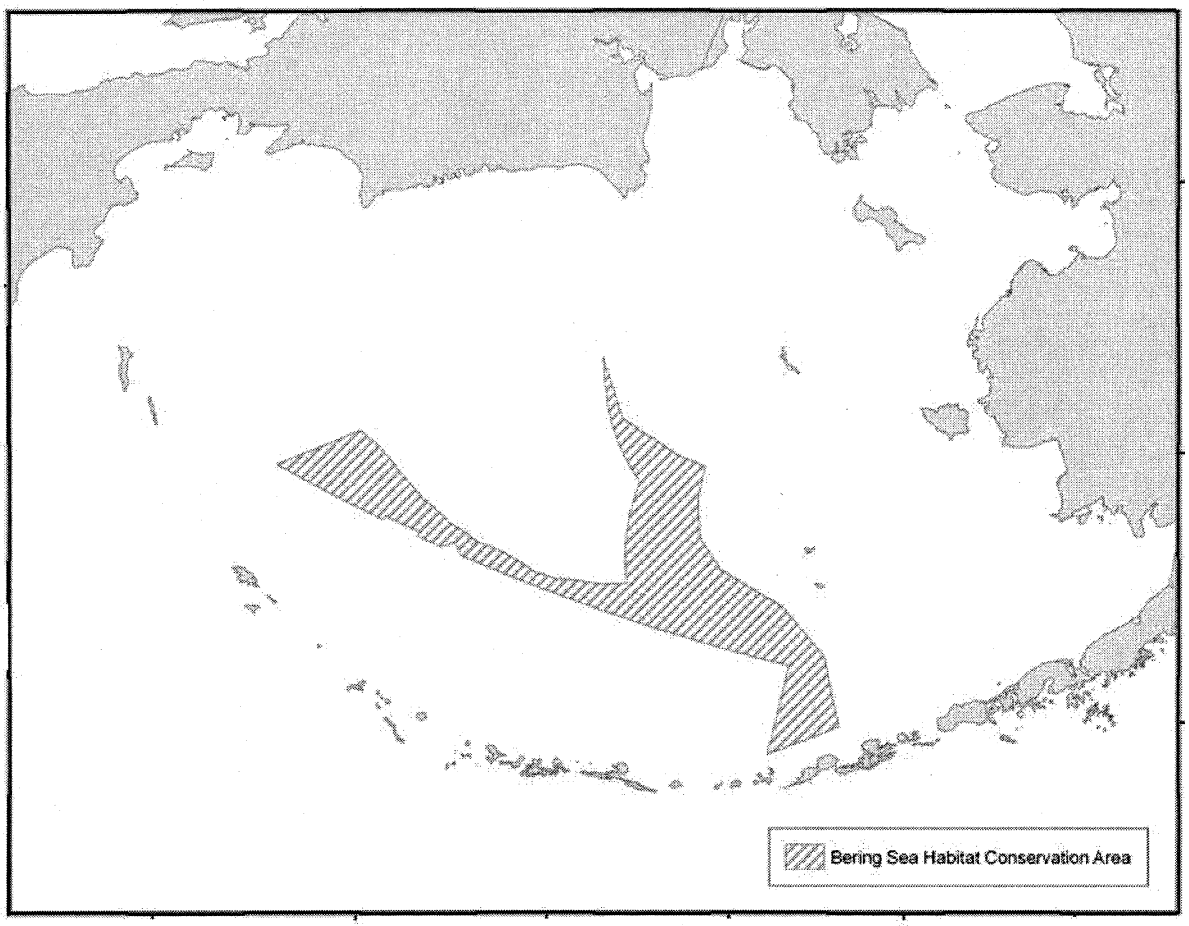

Figure 16 to Part 679--Bering Sea Habitat Conservation Area

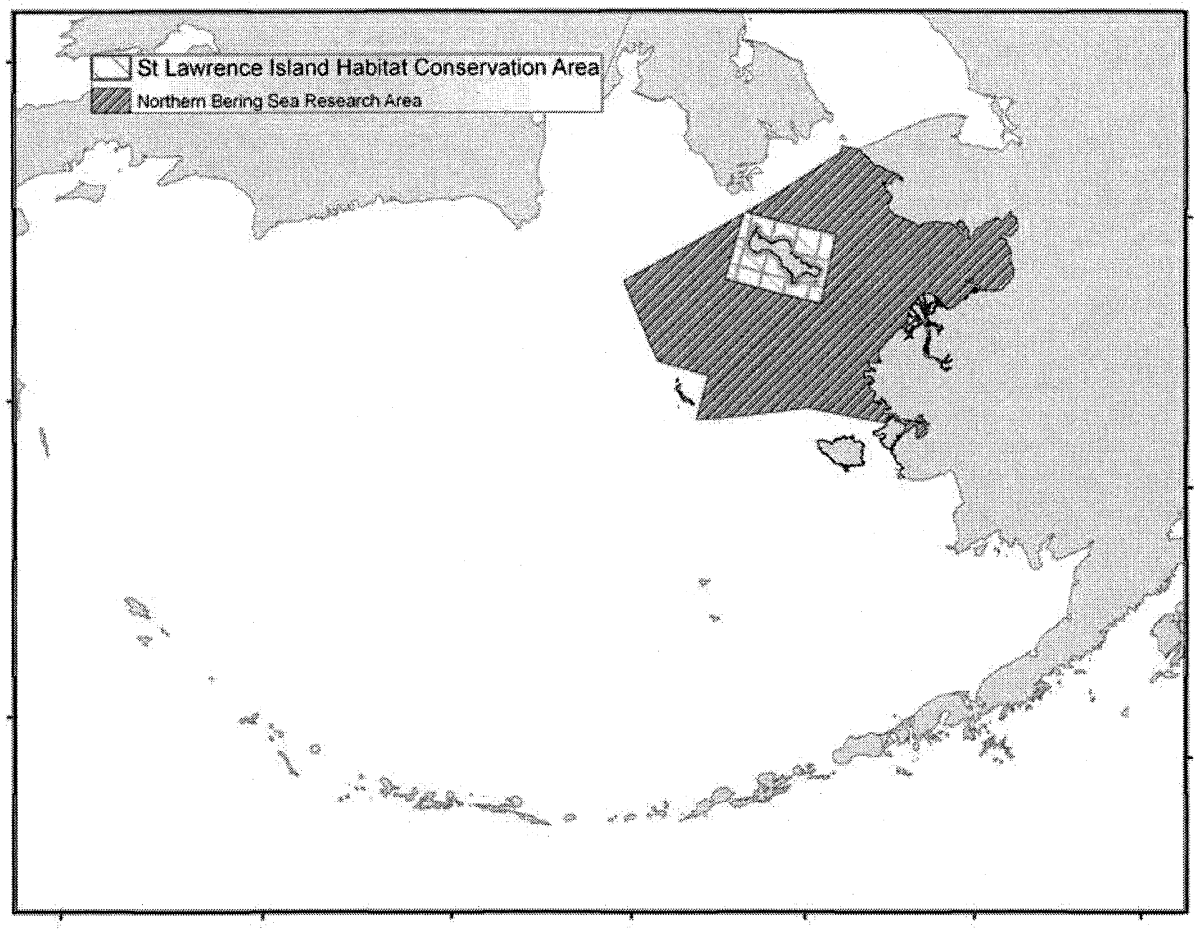

Figure 17 to Part 679--Northern Bering Sea Research Area and St. Lawrence Island Habitat Conservation Area

■ 6. Figure 21 is added to part 679 to read as follows:

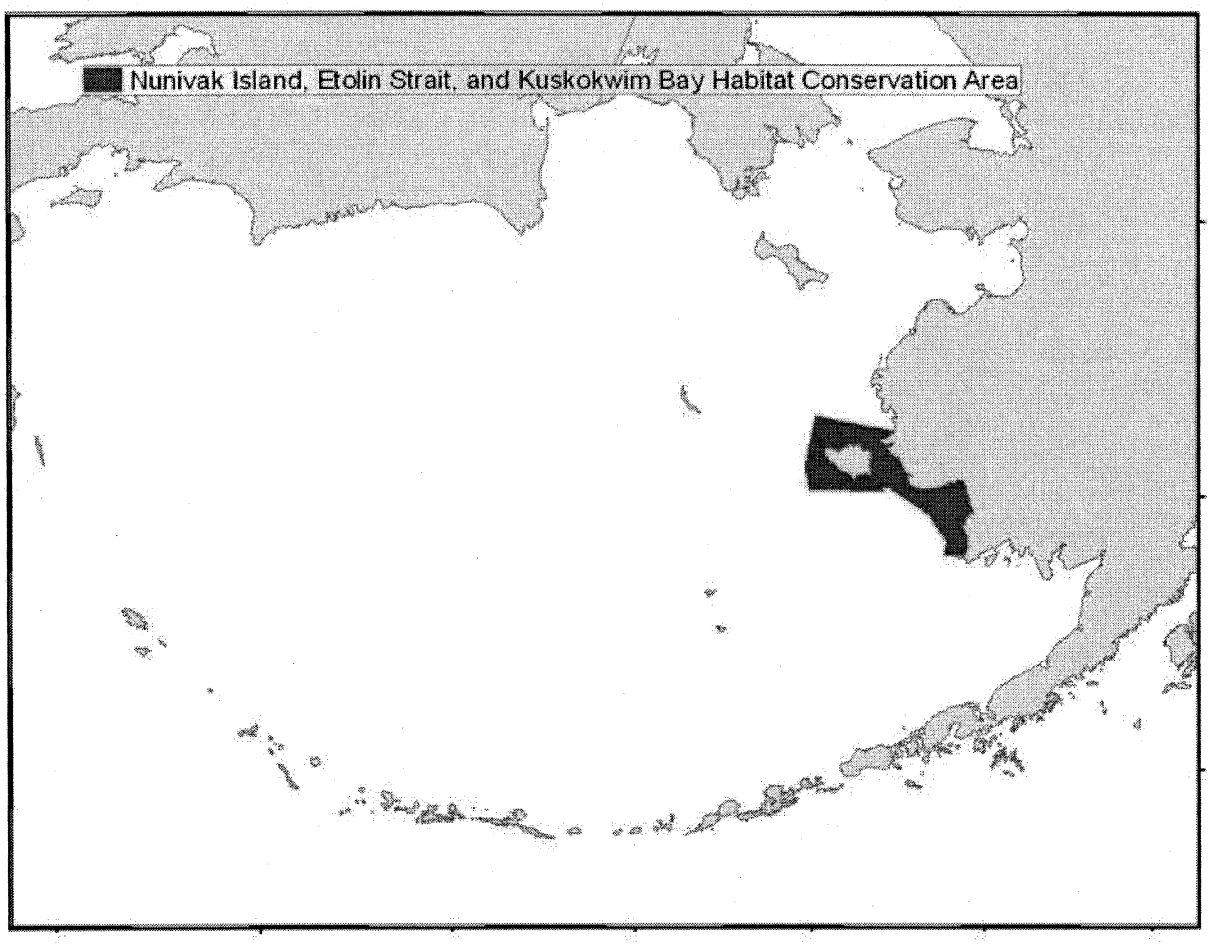

Figure 21 to Part 679--Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area

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